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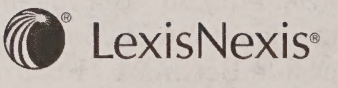

Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
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SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 2

COMMUTATION OF INTERESTS

18-2-101. Purpose.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff McKinney, With All My Worldly Goods I Thee Endow: The Law and Statistics of Dower and Curtesy in Arkansas, 38 U.

Ark. Little Rock L. Rev. 353 (2016).

18-2-105. Table and example.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff McKinney, With All My Worldly Goods I Thee Endow: The Law and Statistics of Dower and Curtesy in Arkansas, 38 U. Ark. Little Rock L. Rev. 353 (2016).

CHAPTER 3

UNIFORM STATUTORY RULE AGAINST PERPETUITIES

18-3-102. When nonvested property interest or power of appointment created.

(a) Except as provided in subsections (b) and (c) of this section and in § 18-3-105(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in § 18-3-101(b) or § 18-3-101(c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

(d) For purposes of this chapter, if a nongeneral power of appointment or a general testamentary power of appointment is used to create another nongeneral power of appointment or general testamentary power of appointment, the nonvested property interest or power of appointment created through the exercise of the other nongeneral power of appointment or general testamentary power of appointment is considered to have been created at the same time the first nongeneral power of appointment or general testamentary power of appointment was created.

History. Acts 2007, No. 240, § 1; 2017, No. 945, § 3.

A.C.R.C. Notes. Acts 2017, No. 945, § 1, provided: "Title. This act shall be

known and may be cited as the 'Dynasty Trust Act'."

Acts 2017, No. 945, § 2, provided: "Legislative intent. It is the intent of the General Assembly to:

"(1) Join the majority of states that allow the creation of perpetual trusts also commonly known as dynasty trusts;

"(2) Benefit successive generations of beneficiaries by protecting trust assets from federal taxes and the creditors of a beneficiary;

"(3) Amend the current rule against perpetuities so that perpetual trusts may be created in the State of Arkansas, increasing trust business within the state, instead of having a trust grantor create a trust in a foreign state for the sole purpose of ensuring the life of the trust beyond the short period of time granted by Arkansas's rule against perpetuities; and

"(4) Amend the current rule against perpetuities to allow the transfer of trust assets held in trust back to the State of Arkansas without creating a taxable event."

Amendments. The 2017 amendment added (d).

18-3-104. Exclusions from statutory rule against perpetuities.

Section 18-3-101 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State; or

(8)(A) a nonvested property interest or power of appointment provided in a trust created or administered in this state so long as the trust:

(i) has one (1) or more trustees who are able to convey an absolute fee in possession of land, or full ownership of personal property;

(ii) has one (1) or more trustees with express or implied power to sell the trust assets; or

(iii) vests in one (1) or more persons in being the unlimited power to terminate the trust.

(B) if the power of alienation is suspended during the life of the trust, the rule against perpetuities under § 18-3-101 will begin to run from the date of suspension.

(C) the exception created in this subdivision (8) applies to a trust created in Arkansas on or after August 1, 2017 and to any other trust whose principal place of administration is transferred to Arkansas on or after August 1, 2017, regardless of when the trust was created.

History. Acts 2007, No. 240, § 1; 2017, No. 945, § 4.

A.C.R.C. Notes. Acts 2017, No. 945, § 1, provided: "Title. This act shall be known and may be cited as the 'Dynasty Trust Act'."

Acts 2017, No. 945, § 2, provided: "Legislative intent. It is the intent of the General Assembly to:

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"(4) Amend the current rule against perpetuities to allow the transfer of trust assets held in trust back to the State of Arkansas without creating a taxable event."

Amendments. The 2017 amendment added (8).

SUBTITLE 2. REAL PROPERTY

CHAPTER 11

REAL PROPERTY INTERESTS GENERALLY

SUBCHAPTER.

Subchapter 1 — Ownership and Possession

SECTION.

Effective Dates. Acts 2019, No. 496, § 3: Mar. 18, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act is necessary to prevent claims of liability against parties that are exempt from liability as a matter of public policy of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

18-11-106. Adverse possession.

CASE NOTES

Analysis

In General.
Prescriptive Easement Not Shown.
Remainder Interest.

In General.

Trial court incorrectly indicated that a party could not claim under both color of title and as an adverse possessor at the same time; the trial court made no specific findings of fact on the remedy of adverse possession but merely stated that the sister's actions were that of a bona fide purchaser and were inconsistent with an adverse possessor. Therefore, the case was remanded for reconsideration of the adverse possession claim. O'Neal v. Love, 2017 Ark. App. 336, 523 S.W.3d 381 (2017).

After the trial court erroneously found that the claimant's use of the real property was permissive, the court did not consider the remaining adverse-possession factors of whether the claimant's continued possession of the property after the grantor's death became adverse and whether the claimant proved color of title and payment of taxes on the property or contiguous property for seven years; therefore, the case was reversed and remanded for the trial court to reconsider the claimant's adverse-possession and quiet-title claims. Love v. O'Neal, 2018 Ark. App. 543, 564 S.W.3d 546 (2018).

Prescriptive Easement Not Shown.

Trial court did not err in denying the neighbors' claim of a prescriptive easement across an owner's real property because testimony that other persons had occasionally used the road at issue to access the property behind the owner's property for various reasons was not sufficient to show such use was adverse to the owner's interests, the neighbors' use of the owner's driveway did not commence until 2005 and was discontinued in 2010 when the owner put up the pipe fence and a locked gate, which time fell short of the seven-year period required to obtain an easement by prescription. Kelley v. Williams, 2015 Ark. App. 609, 474 S.W.3d 884 (2015).

Remainder Interest.

Trial court erred in quieting title to a tract of land in appellee based on adverse possession. Because it was undisputed that appellant did not receive notice of the tax sales, the sales were void and could not have extinguished appellant's remainder interest. Peavler v. Bryant, 2015 Ark. App. 230, 460 S.W.3d 298 (2015).

18-11-107. Required disclosure by closing agent — Definitions.

(a) As used in this section:

(1) "Agricultural operation" means an agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including:

(A) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;

(B) The planting, cultivating, harvesting, and processing of crops and timber; and

(C) The production of any plant or animal species in a controlled freshwater or saltwater environment; and

(2) "Closing agent" means a person that facilitates a closing.

(b) A closing agent shall provide a written disclosure statement before or at the time of closing a real estate transaction that makes a buyer of real property aware that:

(1) The real property may be located within or near a rural area; and

(2) Agricultural operations on real property nearby are protected under § 2-4-101 et seq. and shall not be found to be a public or private nuisance if the agricultural operation employs methods or practices that are commonly or reasonably associated with agricultural production.

(c) A cause of action shall not arise against and liability shall not be imposed upon a closing agent or a closing agent's employer due to a failure to provide a buyer of real property the written disclosure statement required under subsection (b) of this section.

History. Acts 2019, No. 515, § 1.

18-11-108. Liability for criminal acts.

(a) A criminal act committed on real property by a third party is not foreseeable in any circumstance by a person having an interest in the real property, including without limitation:

(1) An owner;

(2) A landlord;

(3) A tenant; or

(4) A lienholder.

(b) Except as provided in subsection (c) of this section, a person having an interest in real property shall not be liable to a licensee, invitee, trespasser, employee, agent, or any other person for the unforeseeable criminal acts of a third party committed on his or her real property.

(c) This section does not:

(1) Establish or repeal the doctrine of infra hospitium, which means in the care or custody of the innkeeper, or change the liability of an innkeeper or the operator of a public lodging; and

(2) Expand or reduce the obligation or liabilities of an employer or principal for criminal acts committed under the doctrine of respondeat superior, which makes the principal liable to a third party for any loss caused by the principal's agent.

History. Acts 2019, No. 496, § 2.

A.C.R.C. Notes. Acts 2019, No. 496, § 1, provided: "Legislative intent. The General Assembly finds that:

"(1) Owners of real property, landlords, tenants, or others having an interest in real property do not have a duty to protect an employee or tenant on the real property from the criminal acts of third parties as held by the Court of Appeals in Park Plaza Mall CMBS, LLC v. Powell, 2018 Ark. App. 48.;

"(2) Criminal acts committed by third parties are not reasonably foreseeable; and

"(3) The existing public policy of the State of Arkansas is that the owners of real property, landlords, tenants, or others having an interest in real property do not have a duty to protect or safeguard an employee or tenant against the criminal acts of third parties".

Subchapter 3 — Recreational Uses — Owner's Liability

18-11-301. Purpose.

CASE NOTES

Applicability.

In an action arising from the deadly flooding of a federal campground, district court properly granted the United States' motion to dismiss for lack of jurisdiction because the Federal Tort Claims Act removed immunity from the United States only in those circumstances in which a private landowner would be liable, and an individual landowner would have received immunity from plaintiffs' tort claims under the Arkansas Recreational Use Statute, § 18-11-301 et seq. Moss v. United States, 895 F.3d 1091 (8th Cir. 2018).

18-11-302. Definitions.

CASE NOTES

Charge.

Plain terms of §§ 18-11-307(2) and 18-11-302 removed immunity only when a fee was charged to enter a particular area; fees subsequent to entry, such as charges to access services such as water or electrical hookups, did not alter the initial grant of immunity. Under the plain language of the statutes, the charge exception did not apply to campsite fees paid by campers in an area that flooded. Moss v. United States, 895 F.3d 1091 (8th Cir. 2018).

18-11-307. Exceptions to owner's immunity.

CASE NOTES

Analysis

Charge.
Failure to Warn.
Federal Government.

Charge.

Plain terms of subdivision (2) of this section and the definition of "charge" in § 18-11-302 removed immunity only when a fee was charged to enter a particular area; fees subsequent to entry, such as charges to access services such as water or electrical hookups, did not alter the initial grant of immunity. Under the plain language of the statutes, the charge exception did not apply to campsite fees paid by campers in an area that flooded. Moss v. United States, 895 F.3d 1091 (8th Cir. 2018).

Failure to Warn.

For purposes of the exception to immunity in subdivision (1) of this section, plaintiffs' claims were based on a "500-year" flood event that went far beyond the scope of the flood risk of which plaintiffs alleged the United States either was or should have been aware. The limited evidence of knowledge of minor flooding events within a 100-year floodplain was insufficient to show actual knowledge of the danger to human life posed by a more

serious flood event. Moss v. United States, 895 F.3d 1091 (8th Cir. 2018).

Federal Government.

In an action arising from the deadly flooding of a federal campground, district court properly granted the United States' motion to dismiss for lack of jurisdiction because the Federal Tort Claims Act removed immunity from the United States only in those circumstances in which a private landowner would be liable, and an individual landowner would have received immunity from plaintiffs' tort claims under the Arkansas Recreational Use Statute. Moss v. United States, 895 F.3d 1091 (8th Cir. 2018).

Subchapter 4 — Posted Land

18-11-404. Methods of posting — Forest lands.

The owner or lessee of any forest land may post the land by any of the following methods:

(1)(A) By placing signs around the boundaries of the property at points no more than one hundred feet (100') apart and at each point of entry.

(B) The signs shall bear the words "posted" or "no trespassing", or both, in letters at least four inches (4″) high and shall be so placed as to be readily visible to any person approaching the property;

(2)(A) By placing identifying paint marks on trees or posts around the area to be posted.

(B) Each paint mark shall be a vertical line of at least eight inches (8″) in length and the bottom of the mark shall be no less than three feet (3') nor more than five feet (5') high.

(C) Such paint marks shall be placed no more than one hundred feet (100') apart and shall be readily visible to any person approaching the property.

(D)(i) The type and color of the paint to be used for posting shall be prescribed by rule by the Arkansas Forestry Commission.

(ii) The commission shall not select a color that is presently being used by the timber industry in Arkansas to mark land lines or property lines; or

(3) By enclosing the property with a fence sufficient under § 2-39-101 et seq.

History. Acts 1989, No. 35, § 3; 1999, No. 1029, § 9; 2019, No. 315, § 1683.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (2)(D)(i).

18-11-405. Methods of posting — Property other than forest.

The owner or lessee of any real property other than forest land, including cultivated land, orchards, pasture land, impoundments, or other real property, may post such real property by any of the following methods:

(1)(A) By placing signs around the boundaries of the property at points no more than one thousand feet (1,000') apart and at each point of entry.

(B) The signs shall bear the words "posted" or "no trespassing", or both, in letters at least four inches (4") high and shall be so placed as to be readily visible to any person approaching the property;

(2)(A) By placing identifying paint marks on posts around the area to be posted.

(B) Each paint mark shall be a vertical line of at least eight inches (8") in length, and the bottom of the mark shall be no less than three feet (3') nor more than five feet (5') high.

(C) Such paint marks shall be placed no more than one thousand feet (1,000') apart and at each point of entry and shall be readily visible to any person approaching the property.

(D)(i) The type and color of the paint to be used for posting shall be prescribed by rule by the Arkansas Forestry Commission.

(ii) The commission shall not select a color that is presently being used by the timber industry in Arkansas to mark land lines or property lines; or

(3) By enclosing the property with a fence sufficient under § 2-39-101 et seq.

History. Acts 1989, No. 35, § 3; 1999, No. 1029, § 10; 2019, No. 315, § 1684.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (2)(D)(i).

CHAPTER 12

CONVEYANCES

SUBCHAPTER.

4. Husband and Wife.

Subchapter 1 — General Provisions

18-12-102. Transfer by deed — Warranty.

RESEARCH REFERENCES

ALR. Award of Attorney's Fees for Breach of Covenant of Quiet Enjoyment, 31 A.L.R.7th Art. 5 (2018).

Award of Punitive Damages for Breach of Covenant of Quiet Enjoyment, 31 A.L.R.7th Art. 6 (2018).

18-12-103. Restrictive covenants — Definition.

CASE NOTES

Analysis

Appellate Review.
Incorporation by Reference.
Owners of the Real Property.

Appellate Review.

Although appellants argued that the creation of overlay zones was unreasonable because this section required a 100% vote of the owners of the property owners association for passage, the appellate court did not reach the merits of the argument because the circuit court did not consider it or rule on it. Garner v. Bd. of Dirs., Hot Springs Village Property Owners Ass'n, 2017 Ark. App. 539, 531 S.W.3d 438 (2017).

Incorporation by Reference.

Both the bylaws and rules and regulations were validly incorporated in the covenant, and while the bylaws were not created until nine years after the declarations were filed, the bylaws simply provided details and amendments to issues contemplated in the declarations; there was enough information in the declarations to allow a purchaser to make an inquiry and thus the bylaws and rules and regulations were sufficiently referenced in the declarations to be incorporated. Dye v. Diamante, 2017 Ark. 42, 510 S.W.3d 759 (2017).

Owners of the Real Property.

Two property owners were not bound by restrictive covenants they did not sign; at the time the owners entered into their contract to purchase the property, the land-use restrictions had not been executed, and they were executed later without the owners' signatures. The signature requirement was not negated by the owners' alleged knowledge of the restrictions, which was based on a sentence in their agreement for deed; nor did the fact that the owners purchased the property pursuant to a contract for deed mean that they were not "owners" for purposes of this section. Akers v. Butler, 2015 Ark. App. 650, 476 S.W.3d 183 (2015).

18-12-106. Joint tenants with right of survivorship.

CASE NOTES

Survivorship Interest.

Trial court erred in converting a joint tenancy to a tenancy in common and in disposing of two identically titled properties in different ways when title to both properties passed to appellant as the surviving joint tenant. The parties' settlement agreement, in which they agreed to sell the property at some point in the future, did not convert ownership of the properties to a tenancy in common. Farrow v. Fuller, 2017 Ark. App. 144, 515 S.W.3d 652 (2017).

18-12-107. Transfer fee covenants prohibited — Definitions.

CASE NOTES

Applicability.

Declarations were properly recorded in 1997; this section, enacted in 2011, by its very terms does not specifically invalidate transfer fees recorded before the 2011 act, and thus the trial court did not err in declaring the transfer fees enforceable. Dye v. Diamante, 2017 Ark. 42, 510 S.W.3d 759 (2017).

This section destroys a contractual right to apply transfer fees to property, and is therefore not remedial or procedural. Dye v. Diamante, 2017 Ark. 42, 510 S.W.3d 759 (2017).

Subchapter 2 — Acknowledgment and Proof of Instruments

18-12-208. Defects.

CASE NOTES

Lack of Acknowledgment.

Family's claim that any defects in the acknowledgement of a prenuptial agreement between the decedent and his wife could be cured was rejected as there was no acknowledgement, defective or otherwise, and thus the curative provisions of this section did not apply. Lyle Farms P'ship v. Lyle, 2016 Ark. App. 577, 507 S.W.3d 519 (2016).

Subchapter 4 — Husband and Wife

SECTION.

18-12-401. Deed between spouses.

(a) A deed of conveyance of real property located in this state executed after the passage of this act by an individual to his or her spouse shall convey to the grantee named in the deed the entire interest of the grantor in the property conveyed, or the interest specified in the deed, as if the spousal relation did not exist between the parties to the deed.

(b)(1) All deeds of conveyance of real property in this state executed before the passage of this act by an individual to his or her spouse shall convey to the respective grantees in the deeds the full and entire interests of the respective grantors in the deeds, or the interests specified in the deeds respectively, as if the spousal relation had not existed between the parties to the deeds.

(2) This subsection does not apply to a deed that has been construed by a court of competent jurisdiction.

(c) The word "deed" as used in this section includes instruments of writing affecting, or purporting to affect, the title to real property, either by way of conveyance or encumbrance.

(d) The purpose of this section is to empower an individual to contract with his or her spouse in regard to real property in the same manner and to the same effect as if the spousal relation did not exist between the parties to the deed.

History. Acts 1935, No. 86, §§ 1-3; Pope's Dig., §§ 1866-1868; A.S.A. 1947, §§ 50-413, 50-413n, 50-414; Acts 2019, No. 387, § 1.

Amendments. The 2019 amendment, in (a), substituted "an individual to his or her spouse" for "a married man directly to his wife or by a married woman directly to her husband, substituted "convey" for "be construed as conveying", deleted "as fully and to all intents and purposes" preceding "as if", and substituted "spousal" for "marital"; in (b)(1), substituted "convey" for "be construed as conveying", and deleted "as fully and to all intents and purposes" following "respectively"; substituted "does not apply" for "shall not be construed as applying" in (b)(2); substituted "includes" for "shall be construed to include any and all" in (c); in (d), substituted "an individual to contract with his or her spouse" for "married men to con-

tract with their wives and married women to contract with their husbands", substituted "the same" for "like", and substituted "the spousal relation did not exist between the parties to the deed" for "married men and married women were unmarried"; and made stylistic changes.

18-12-403. Conveyance, etc., of homestead.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

Subchapter 6 — Miscellaneous Conveyances

18-12-603. Grants to two or more as tenancy in common.

RESEARCH REFERENCES

Ark. L. Notes. Joel Hutcheson, Say What You Mean! How Arkansas Courts Are Contradicting the Default Rule of Tenancy in Common, 71 Ark. L. Notes 22 (2019).

18-12-604. Deed to trustee or agent.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CHAPTER 14

ARKANSAS TIME-SHARE ACT

Subchapter 1 — General Provisions

18-14-104. Legal status of time-share estates.

CASE NOTES

Election of Improvement District Commissioners.

While timeshare owners do not receive an individual tax bill, the property itself is assessed real property taxes by the assessor and improvement-district assessments, which are then paid by the timeshare owners through the owners association; thus, a timeshare owner owns property subject to taxation and thereby satisfies the definition of a "property owner" entitled to individual notice of commissioner elections under § 14-92-240(c), and each timeshare owner is entitled to one vote for each commissioner position to be filled. Roberts v. Holiday Island Suburban Improvement Dist. #1, 2018 Ark. App. 394, 559 S.W.3d 269 (2018).

CHAPTER 15
EMINENT DOMAIN

SUBCHAPTER.
1. General Provisions.
4. Municipal Corporations — Waterworks Systems.
7. Dams, Mills, Etc.
17. Private Property Protection Act.

Subchapter 1 — General Provisions

SECTION.
18-15-103. Bill of rights — Property owner.

18-15-103. Bill of rights — Property owner.

(a) The principles expressed in subsection (b) of this section shall serve as standards to be followed in any proceeding that involves an entity authorized by law to exercise the power of eminent domain.

(b) An owner of property subject to a proceeding to condemn private property under the right of eminent domain shall have the following bill of rights:

(1) A property owner is entitled to receive just compensation when private property is taken for a public use;

(2) Private property may only be taken for public use;

(3) Private property may only be taken by a governmental entity or a private entity authorized by law to exercise the power of eminent domain;

(4) A property owner has the right to receive reasonable notification of an entity's interest in taking the property owner's private property;

(5)(A) A property owner shall receive from the government or private entity an assessment of the just compensation the entity estimates for the property owner's private property before or contemporaneously with a good faith offer of just compensation.

(B) However, when a property owner cannot be located and must be served by warning order, a filing of the assessment with the complaint for condemnation shall be sufficient compliance with subdivision (b)(5)(A) of this section;

(6) An entity shall make a written good faith offer to buy the property owner's private property before initiating a condemnation proceeding;

(7) A property owner has the right to hire an appraiser or other independent professional to determine the value of the private property or to assist the property owner in a condemnation proceeding;

(8) A property owner has the right to hire an attorney to represent the property owner in a condemnation proceeding and negotiate on behalf of the property owner with the entity;

(9) In a proceeding to condemn private property under the right of eminent domain, the circuit court shall impanel a jury of twelve (12)

persons as in civil cases to determine the just compensation the government or private entity owes the property owner;

(10) Any party has the right to appeal a decision entered by the circuit court under subdivision (b)(9) of this section; and

(11)(A) Except as provided in subdivision (b)(11)(B) of this section, in a condemnation brought under the laws of this state, a property owner shall be entitled to an award of the property owner's costs, expenses, and reasonable attorney's fees incurred in preparing and conducting the final hearing and adjudication, including without limitation the cost of appraisals and fees for experts if the compensation ultimately awarded exceeds the condemning entity's written good faith offer required under subdivision (b)(6) of this section by twenty percent (20%) or more.

(B) An award of costs, expenses, and attorney's fees in a condemnation action brought by a county or municipality is governed by the laws that authorize the condemnation action.

History. Acts 2015, No. 1101, § 1; 2017, No. 731, §§ 1, 2.

Amendments. The 2017 amendment inserted "written" in (b)(6); and substituted "written good faith offer required under subdivision (b)(6) of this section" for "initial assessment of the just compensation owed" in (b)(11)(A).

Subchapter 3 — Municipal Corporations Generally

18-15-303. Municipal corporations — Power to condemn — Proceedings — Controversy.

CASE NOTES

Attorney's Fees.

Trial court erred in awarding attorney's fees to the owners in a condemnation proceeding; while § 27-67-317 clearly allows for an award of a fee against the State, it does not allow for an award of fees against a city, and the city clearly proceeded under its own authority when it was substituted as a party. The city did not assume the State Highway Commission's obligation to pay attorney's fees and gained right of entry to the property by virtue of paying a deposit into the registry of the court pursuant to this section. City of Siloam Springs v. La-De, LLC, 2015 Ark. 433, 474 S.W.3d 869 (2015).

18-15-307. Compensation for and possession of property.

CASE NOTES

Analysis

Attorney's Fees.
Costs.
Expert Witness Fees.

Attorney's Fees.

Trial court erred in awarding attorney's fees to a condemnee in a city's condemnation proceeding because attorney's fees are not expressly provided for in subsection (c) of this section. City of Benton v. Alcoa Rd. Storage, 2017 Ark. 78, 513 S.W.3d 259 (2017).

Circuit court did not err in denying property owners' motion for attorney's fees and expert witness fees because the Supreme Court had determined that attorney's fees and expert-witness fees were not recoverable under subsection (c) of

this section, and the Court of Appeals was bound by that determination. Brown v. City of Bryant, 2017 Ark. App. 239, 520 S.W.3d 287 (2017).

Costs.

Deposition fee and the court-reporter fee (for the deposition) were not taxable as costs under this section because expert-witness fees and deposition expenses were not authorized by statute or rule. Brown v. City of Bryant, 2017 Ark. App. 239, 520 S.W.3d 287 (2017).

Appraisal expenditure was a cost "occasioned by the assessment" under subsection (c) of this section that property owners could recover; it was a cost specifically and necessarily incurred for assessment purposes prior to the jury trial in order to provide evidence of the assignment of valuation for the property sought to be condemned. Brown v. City of Bryant, 2017 Ark. App. 239, 520 S.W.3d 287 (2017).

Trial court did not direct that copy charges, exhibit processing, fax transmissions, and postage be taxed to a city, and it did not err in its interpretation of this section; this section does not define "other costs", but subsection (c) gives the trial court leeway, stating that other costs which may arise shall be charged or taxed as the court may direct. Brown v. City of Bryant, 2017 Ark. App. 239, 520 S.W.3d 287 (2017).

In a condemnation proceeding, the circuit court did not err in awarding appraisal fees to the trust; under controlling case law, an appraisal expenditure was a "cost occasioned by the assessment" that could be recovered in determining the amount to award. City of Bryant v. Boone Trust, 2018 Ark. App. 547, 564 S.W.3d 550 (2018).

In determining the amount to award for "other costs" in a condemnation proceeding, the circuit court awarded only the percentage the trust recovered above that which was offered by the city, and the appellate court could not say on the record before it that this was an abuse of discretion. City of Bryant v. Boone Trust, 2018 Ark. App. 547, 564 S.W.3d 550 (2018).

In a condemnation action, the trust was not entitled to prejudgment interest on the award of costs because the expenses were not reasonably ascertainable; on the other hand, the trust was entitled to post-judgment interest on the award of costs. City of Bryant v. Boone Trust, 2018 Ark. App. 547, 564 S.W.3d 550 (2018).

Expert Witness Fees.

Trial court properly found that expert-witness fees incurred by a condemnee to establish the calculation of its just compensation were not "costs occasioned by the assessment" within the meaning of subsection (c) of this section; in the absence of statutory authority, the fees of expert witnesses could not be treated as costs and charged against a losing party. City of Benton v. Alcoa Rd. Storage, 2017 Ark. 78, 513 S.W.3d 259 (2017).

Subchapter 4 — Municipal Corporations — Waterworks Systems

SECTION.

18-15-407. State or county roads.

(a) If any portion of a state or county road will lie below the high-water mark of an impounding lake, the operating authority of the municipal waterworks system shall have the right to flood the road.

(b) However, if the state or the county determines that a replacement road is required, the municipality shall be obligated to pay the cost of replacing the flooded road with another road of the same type and width. The road shall be the shortest reasonable distance consistent with good engineering practice.

(c)(1) The Arkansas Department of Transportation, hereinafter called "state", shall make all necessary determinations for the state highways.

(2) The county judges, hereinafter called "county", shall make all determinations for county roads.

(d) If the county or state determines that a road need not be replaced, the operating authority is authorized to pay to the county or to the state a reasonable sum in lieu of relocating the road. Any sum so paid shall be used by the state or county for road purposes elsewhere in the state or county, as the case may be.

(e) The county or state may permit the municipality to construct the relocated road, and in that event the operating authority shall be entitled to condemn rights-of-way for the roads in its own name under this subchapter or under any eminent domain act available to the county or state.

(f) After acquiring the rights-of-way, title thereto shall be transferred to the county or state.

(g) If any part of the road replaced or paid for as authorized in this section lies upon property owned by the municipality, title to that part of the replaced road shall vest in the municipality.

History. Acts 1957, No. 269, § 8; A.S.A. 1947, § 35-914; Acts 2017, No. 707, § 39.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (c)(1).

18-15-410. Rights of property owner upon entry by municipality.

CASE NOTES

Statute of Limitations.

Where city claimed title to island property under a 1975 condemnation decree that claimants contended their predecessors in title had no notice of, the trial court properly found that the claimants' sole remedy was an inverse condemnation action under this section and that the applicable seven-year statute of limitations under § 18-61-101 had expired. The language of this section plainly encompasses actions taken by a municipality. Blackwood's Island v. Stodola, 2018 Ark. App. 357, 552 S.W.3d 62 (2018).

Subchapter 5 — Electric Companies Generally

18-15-504. Petition for assessment of damages.

CASE NOTES

Notice.

Landowners' argument that they had not received the 10-day notice required by this section was rejected as they knew of the energy company's condemnation petition more than 10 days before the jury trial convened. Watts v. Entergy Ark., Inc., 2018 Ark. App. 539, 561 S.W.3d 774 (2018).

Subchapter 7 — Dams, Mills, Etc.

SECTION.

18-15-711. Raising of dam.

Any owner of any dam and mill, or other machinery erected by virtue of this subchapter, may raise his or her dam by permission of the court, under and by the same proceedings, rules, and conditions provided in this subchapter.

History. Rev. Stat., ch. 98, § 21; C. & M. Dig., § 3963; Pope's Dig., § 4965; A.S.A. 1947, § 35-521; Acts 2019, No. 315, § 1685.

Amendments. The 2019 amendment substituted "rules" for "regulations".

Subchapter 17 — Private Property Protection Act

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

18-15-1703. Taking — Application.

(a)(1) An owner of real property asserting a taking under this subchapter shall bring a cause of action in circuit court claiming that the implementation of a regulatory program by a governmental unit has permanently reduced by at least twenty percent (20%) the fair market value of the real property.

(2) The reduction in the fair market value of the real property shall be determined by comparing the fair market value of the real property as if the regulatory program is not in effect and the fair market value of the real property determined as if the regulatory program is in effect.

(3) To assert that a taking has occurred, the regulatory program must have been implemented at the time the owner acquired title or after April 2, 2015, whichever is later.

(4) Upon a preponderance of the evidence, the real property shall be deemed to have been taken for the use of the public.

(b) A jury shall determine the amount of the difference in fair market value.

(c)(1) Upon a finding that real property has been taken for the use of the public, the governmental unit may either:

(A) Pay compensation for the reduction in fair market value caused by the regulatory program; or

(B) Invalidate all or part of the regulatory program.

(2) Compensation is required under this section only when the fair market value of the real property is reduced by at least twenty percent (20%).

(3) If a governmental unit elects to pay compensation to the private real property owner under subdivision (c)(1)(A) of this section:

(A) The court that rendered the judgment in the lawsuit or the state agency that issued the final order or decision in the case shall withdraw the part of the judgment or final decision or order rescinding the regulatory program;

(B) The governmental unit shall pay to the owner the damages determined in the judgment or final order by the thirtieth day after the date the judgment is rendered or the final decision or order is issued; and

(C) When more than one (1) governmental unit is involved, the court shall determine the proportion each governmental unit shall be required to contribute to the compensation.

(d) When a regulatory program resulting from a zoning ordinance operates to change a permitted use and the fair market value of the affected real property is the same or greater than the fair market value was before the effective date of the implementation of the regulatory program, compensation shall not be paid under this subchapter.

(e) This subchapter does not apply to:

(1) An owner of real property if the real property is not the direct subject of the regulatory program;

(2) Laws or rules within the jurisdiction of the State Health Officer or regulatory activities of the Arkansas Pollution Control and Ecology Commission, the Division of Environmental Quality, the Arkansas Livestock and Poultry Commission, the Arkansas Public Service Commission, or the State Plant Board under delegated or authorized programs or approved plans under federal law;

(3) An eminent domain proceeding to which the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq., as in effect on January 1, 2015, applies;

(4) An eminent domain proceeding undertaken by a governmental unit under applicable law;

(5) A lawful forfeiture or seizure of contraband under Arkansas Code, Title 5;

(6) A lawful seizure of property as evidence of a crime or violation of law;

(7) An action, including an action of a governmental unit, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a governmental unit that is reasonably taken to fulfill an obligation mandated by state law;

(8) The discontinuance or modification of a program, rule, or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;

(9) An action taken to prohibit or restrict a condition or use of private real property if the governmental entity reasonably determines that the condition or use constitutes a public or private nuisance as determined by background principles of nuisance and property law of this state;

(10) An action taken out of a reasonable good faith belief that the action is necessary to prevent an immediate threat to life or property;

(11) A rule, regulation, or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(12) An action taken by a governmental unit:

(A) To regulate construction in an area designated under law as a floodplain;

(B) To regulate on-site sewage facilities;

(C) To prevent waste of or protect rights of owners of interest in groundwater;

(D) To prevent subsidence; or

(E) Under its police power to make laws, rules, and regulations for the benefit of its communities;

(13) The appraisal of property for purposes of ad valorem taxation;

(14) An action that is taken in response to a threat to public health and safety that is designed to advance the health and safety purpose; or

(15) An action by a municipality unless the regulatory program has effect in the territorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces a regulatory program that does not impose identical requirements or restrictions in the entire territorial jurisdiction of the municipality.

History. Acts 2015, No. 1002, § 2; 2019, No. 315, §§ 1686, 1687; 2019, No. 910, § 3186.

Amendments. The 2019 amendment by No. 315 inserted "rule" in (e)(8) and "rules" in (e)(12)(E).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (e)(2).

CHAPTER 16

LANDLORD AND TENANT

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

18-16-101. Failure to pay rent — Refusal to vacate upon notice — Penalty.

(a) Any person who shall rent any dwelling house or other building or any land situated in the State of Arkansas and who shall refuse or fail to pay the rent therefor when due according to contract shall at once forfeit all right to longer occupy the dwelling house or other building or land.

(b)(1) If, after ten (10) days' notice in writing shall have been given by the landlord or the landlord's agent or attorney to the tenant to vacate the dwelling house or other building or land, the tenant shall willfully refuse to vacate and surrender the possession of the premises to the landlord or the landlord's agent or attorney, the tenant shall be guilty of a misdemeanor.

(2)(A) Upon conviction before any justice of the peace or other court of competent jurisdiction in the county where the premises are situated, the tenant shall be fined in any sum not less than one dollar ($1.00) nor more than twenty-five dollars ($25.00) for each offense.

(B) Each day the tenant shall willfully and unnecessarily hold the dwelling house or other building or land after the expiration of notice to vacate shall constitute a separate offense.

History. Acts 1901, No. 122, § 1, p. 193; C. & M. Dig., § 6569; Acts 1937, No. 129, § 1; Pope's Dig., § 8599; A.S.A. 1947, § 50-523; Acts 2001, No. 1733, § 1; 2017, No. 159, § 2.

A.C.R.C. Notes. Acts 2017, No. 159, § 1, provided: "Findings and legislative intent.

"(a) The General Assembly finds that:

"(1) The decision of the United States Court of Appeals, Eighth Circuit, in Munson v. Gilliam, 543 F.2d 48 (8th Cir. 1976), and the decision of the Arkansas Supreme Court in Duhon v. State, 299 Ark. 503, 774 S.W.2d 830 (Ark. 1989), upheld the constitutionality of Ark Code § 18-16-101;

"(2) The General Assembly amended Ark. Code § 18-16-101 in 2001;

"(3) In January 2015, the Circuit Court of Pulaski County, in State of Arkansas v. Artoria Smith, Case No. CR 2014-2707, ruled that Ark. Code § 18-16-101, as amended, is unconstitutional; and

"(4) It is in the best interests of the people of the State of Arkansas for property owners to continue to have remedies against tenants who fail to pay rent for a dwelling house or other building but refuse to surrender possession of the dwelling house or other building.

"(b) It is the intent of the General Assembly by this act to amend Ark. Code § 18-16-101 so that the language of Ark. Code § 18-16-101 is exactly as was previously in effect when Ark. Code § 18-16-101 was upheld as constitutional in the Munson and Duhon decisions, and to eliminate the amendments to Ark. Code Ann. § 18-16-101 that were found to be unconstitutional in the Smith decision."

Amendments. The 2017 amendment redesignated (b)(2) as (b)(2)(A); substituted "in any sum not less than one dollar ($1.00) nor more than twenty-five dollars ($25.00) for each offense" for "twenty-five dollars ($25.00) per day for each day that the tenant fails to vacate the premises for each offense"; added (b)(2)(B); and deleted (c).

RESEARCH REFERENCES

Ark. L. Notes. Bryan Foster, The Purpose of Criminal Evictions: Applying the Theories of Punishment to Arkansas' Criminal Eviction Statute, 2018 Ark. L. Notes 1993.

Ark. L. Rev. Britta Palmer Stamps,

Recent Developments: Pulaski County Circuit Court Judge Herbert Wright Invalidated Arkansas's "Failure to Vacate" Statute, 68 Ark. L. Rev. 531 (2015).

18-16-108. Property left on premises after termination of lease.

CASE NOTES

Abandoned Property.

Because a tenant's property was left in the leased premises and was therefore "abandoned" under this section, the landlord was free to dispose of it as she saw fit without recourse by the tenant. Derrick v. Haynie, 2017 Ark. App. 327, 522 S.W.3d 831 (2017).

18-16-110. Landlord's liability arising from alleged defects or disrepair of premises.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Wesley N. Manus, Note: The Iron Triangle of Residential Leases: Landlords, Tenants, and Economic Policy in America's Last State Without Implied Warranty of Habitability (*Alexander Apartments v. City of Little Rock*, 60CV-15-6339), 41 U. Ark. Little Rock L. Rev. 117 (2018).

CASE NOTES

Analysis

Construction.
No Agreement.
Summary Judgment.

Construction.

Arkansas Legislature decidedly approved of the caveat lessee doctrine by enacting this section. Hadder v. Heritage Hill Manor, Inc., 2016 Ark. App. 303, 495 S.W.3d 628 (2016).

No Agreement.

There was no proof of an agreement or contractual undertaking of a legal duty to maintain or repair the leased premises. Even if the duty to protect others was assumed by the defendant, it met its duty by providing immediate basic cleanup of the water intrusion upon notification and did so in a proper manner, plus the sitter was warned to be careful and she had walked back and forth over the carpet several times before she fell. Hadder v. Heritage Hill Manor, Inc., 2016 Ark. App. 303, 495 S.W.3d 628 (2016).

Summary Judgment.

Trial court erred in granting summary judgment for defendants because material issues of facts were in dispute regarding whether defendants assumed by conduct a duty to repair the mobile home plaintiff leased from defendants. Whether defendants performed the repairs to a refrigerator in a reasonable manner or whether the facts rose to the level of negligence was for the jury to decide. Hurd v. Hurt, 2017 Ark. App. 228, 519 S.W.3d 710 (2017).

Subchapter 3 — Security Deposits

SECTION.

18-16-301. Definitions.

As used in this subchapter:

(1) "Dwelling unit" means a structure or the part of the structure that is used as a home, residence, or sleeping place by one (1) person

who maintains a household or by two (2) or more persons who maintain a common household;

(2) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part;

(3) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(A) All or part of the legal title to property; or

(B) All or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagor in possession;

(4) "Person" means any individual, firm, partnership, corporation, association, or other organization;

(5) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(6) "Rent" means all payments to be made to the landlord under the rental agreement;

(7) "Rental agreement" means all written or oral agreements and valid rules embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises; and

(8) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History. Acts 1979, No. 531, § 1; A.S.A. 1947, § 50-525; Acts 2019, No. 315, § 1688.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (7).

Subchapter 4 — Self-Service Storage Facilities

Effective Dates. Acts 2017, No. 738, § 2: Mar. 29, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current law concerning the sale of a vehicle by a self-service storage facility does not authorize the issuance of a new certificate of title to the vehicle purchaser and, accordingly, self-service storage facilities are unable to sell abandoned vehicles resulting in irreparable harm to these businesses by causing a loss of income and storage space; and that this act is immediately necessary to allow the sale of abandoned vehicles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

18-16-412. Disposal of personal information — Definition.

(a)(1) As used in this section, "personal information" means information relating to a client, a customer, or a person with whom the occupant does business that readily identifies that person or is closely associated with the person, including without limitation a person's:

(A) Social Security number;

(B) Credit or debit card information;

(C) Bank account number;

(D) Medical information; or

(E) Passport information.

(2) "Personal information" does not include information that readily identifies or is closely associated with the occupant of the leased self-service storage space.

(b) If the operator has a reasonable belief that the leased self-service storage space contains personal information relating to clients, customers, or others with whom the occupant does business, the operator may, after an occupant is in default for a period of more than forty-five (45) days, inspect the contents of a leased self-service storage space to investigate for the presence of personal information without any liability to the occupant or any other person who claims an interest in the personal information.

(c) The operator:

(1) Shall not sell the personal information under § 18-16-406; and

(2) Shall destroy the personal information.

(d) An operator who complies with subsections (b) and (c) of this section is not liable to the occupant or any other person who claims an interest in the personal information.

History. Acts 2017, No. 628, § 1.

18-16-413. Sale of a vehicle.

A self-service storage facility may sell a vehicle of a type subject to registration under the laws of this state using the procedure for the sale of a vehicle as provided in §§ 27-50-1202 and 27-50-1208 — 27-50-1210.

History. Acts 2017, No. 738, § 1.

CHAPTER 17

ARKANSAS RESIDENTIAL LANDLORD-TENANT ACT OF 2007

SUBCHAPTER.

3. General Definitions and Principles of Interpretation — Notice.

Subchapter 1 — Title, Construction, Application, and Subject Matter of Chapter

18-17-101. Title.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Wesley N. Manus, Note: The Iron Triangle of Residential Leases: Landlords, Tenants, and Economic Policy in America's Last State Without Implied Warranty of Habitability (*Alexander Apartments v. City of Little Rock*, 60CV-15-6339), 41 U. Ark. Little Rock L. Rev. 117 (2018).

Subchapter 3 — General Definitions and Principles of Interpretation — Notice

SECTION.

18-17-301. General definitions.

As used in this chapter:

(1) "Action" means a recoupment, counterclaim, suit in equity, and any other proceeding in which rights are determined, including without limitation an action for possession;

(2) "Building and housing codes" means any law, ordinance, or governmental regulation or rule concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises or dwelling unit;

(3)(A) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household and includes landlord-owned mobile homes.

(B) Property that is leased for the exclusive purpose of being renovated by the lessee is not considered a dwelling unit within the meaning of this chapter;

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(5) "Landlord" means the owner, lessor, or sublessor of the premises, and it also means a manager of the premises who fails to disclose as required by this chapter;

(6) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(7)(A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested all or part of:

(i) The legal title to property; or

(ii) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(B) "Owner" includes, but is not limited to, a mortgagee in possession;

(8) "Person" means an individual or organization;

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(10) "Rent" means the consideration payable for use of the premises, including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges;

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under this chapter embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) "Roomer" means a person occupying a dwelling unit:

(A) That does not include the following facilities provided by the landlord:

(i) Toilet;

(ii) Bathtub or shower;

(iii) Refrigerator;

(iv) Stove; and

(v) Kitchen sink; and

(B) Where one (1) or more of these facilities are used in common by occupants in the structure;

(13) "Security deposit" means a monetary deposit from the tenant to the landlord to secure the full and faithful performance of the terms and conditions of the rental agreement as provided in this chapter;

(14)(A) "Single family residence" means a structure maintained and used as a single dwelling unit.

(B) Notwithstanding that a dwelling unit shares one (1) or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;

(15) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others; and

(16) "Willful" means an intentional attempt to avoid obligations under the rental agreement or the provisions of this chapter.

History. Acts 2007, No. 1004, § 1; 2009, No. 482, §§ 2, 3; 2019, No. 315, § 1689.

Amendments. The 2019 amendment inserted "or rule" in (2).

Subchapter 7 — Landlord Remedies

18-17-701. Noncompliance with rental agreement — Failure to pay rent — Removal of evicted tenant's personal property.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Stephanie Mantell, Note: Fee-Shifting Statutes and Landlord-Tenant Law—A Call for the Repeal of the English Rule "Loser Pays" System Regarding Contract Disputes and Its Effect on Low-Income Arkansas Tenants, 39 U. Ark. Little Rock L. Rev. 105 (2016).

18-17-703. Remedy after termination.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Stephanie Mantell, Note: Fee-Shifting Statutes and Landlord-Tenant Law—A Call for the Repeal of the English Rule "Loser Pays" System Regarding Contract Disputes and Its Effect on Low-Income Arkansas Tenants, 39 U. Ark. Little Rock L. Rev. 105 (2016).

18-17-706. Payment of rent into court.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Stephanie Mantell, Note: Fee-Shifting Statutes and Landlord-Tenant Law—A Call for the Repeal of the English Rule "Loser Pays" System Regarding Contract Disputes and Its Effect on Low-Income Arkansas Tenants, 39 U. Ark. Little Rock L. Rev. 105 (2016).

SUBTITLE 3. PERSONAL PROPERTY

CHAPTER 28

UNCLAIMED PROPERTY

SUBCHAPTER.

2. Unclaimed Property Act.
4. Mineral Proceeds.

Subchapter 2 — Unclaimed Property Act

Effective Dates. Acts 2019, No. 325, § 4: Mar. 6, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that under the current provisions of the Unclaimed Property Act, § 18-28-201 et seq., the Auditor of State may not deposit unclaimed property funds with the State Treasurer for investment purposes; and that the unclaimed property funds are currently held in the Unclaimed Property Proceeds Trust Fund accruing minute interest; that the authority to invest funds in the State Treasury Money Management Trust will generate a greater financial return to be used for the benefit of the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

Acts 2019, No. 492, § 2: Mar. 15, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that under the current provisions of the Unclaimed Property Act, § 18-28-201 et seq., the Auditor of State may not sell securities received from a holder within the first three (3) years of custody; that security management costs and fees are costly; and that liquidating the securities upon receipt would save the state money and enable the state to invest the proceeds for a greater financial return to the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

18-28-202. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time stated below for the particular property:

(1) Traveler's check, fifteen (15) years after issuance;

(2) Money order, seven (7) years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under the Uniform Commercial Code — Investment Securities, § 4-8-101 et seq., seven (7) years after the earlier of:

(A) The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner;

(B) The date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner; or

(C) The date that the security holder or payee is presumed lost or unresponsive under 17 C.F.R. § 240.17Ad-17, as it existed on January 23, 2013;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, three (3) years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A demand, savings, or time deposit, including a deposit that is automatically renewable, three (3) years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is not matured for purposes of this section upon its initial date of maturity, unless the most recent correspondence from the financial organization to the owner has been returned unclaimed or undelivered to the financial organization by the postal service;

(6) Money or credits owed to a customer as a result of a retail business transaction, three (3) years after the obligation accrued;

(7) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three (3) years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three (3) years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(8) Property distributable by a business association or financial organization in a course of dissolution, one (1) year after the property becomes distributable;

(9) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one (1) year after the distribution date;

(10) Property held by a court, government, governmental subdivision, agency, or instrumentality, one (1) year after the property becomes distributable;

(11) Wages or other compensation for personal services, one (1) year after the compensation becomes payable;

(12) Deposit or refund owed to a subscriber by a utility, one (1) year after the deposit or refund becomes payable;

(13) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three (3) years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(14) All other property, three (3) years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs; and

(15) Unclaimed property payable or distributable in the course of a demutualization of an insurance company three (3) years after the earlier of:

(A) The date of last contact with the policy holder; or

(B) The date the property became payable or distributable.

(b) At the time that an interest is presumed abandoned under subsection (a), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(1) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(3) the making of a deposit to or withdrawal from a bank account;

(4) correspondence from the financial organization to the owner of the property by mail, which correspondence has not been returned unclaimed or undelivered to the financial organization by the postal service; and

(5) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for purposes of this subchapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

History. Acts 1999, No. 850, § 2; 2001, No. 793, §§ 1, 2; 2003, No. 491, § 1; 2015, No. 1039, § 1; 2017, No. 421, § 1.

Amendments. The 2017 amendment substituted "the Uniform Commercial Code — Investment Securities, § 4-8-101 et seq., seven (7) years" for "§ 4-8-101 et seq. (UCC — Investment Securities), five (5) years" in the introductory language of (a)(3); added (a)(3)(C); and made stylistic changes.

18-28-207. Report of abandoned property.

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of

the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) an aggregated amount of items valued under fifty dollars ($50.00) each;

(4) in the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator by rule prescribes as necessary for the administration of this subchapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the twelve (12) months next preceding July 1 of that year, but a report with respect to a life insurance company, including the report and remittance of unclaimed insurance company demutualization proceeds made under § 18-28-202(a)(15), must be filed before May 1 of each year for the calendar year next preceding.

(e)(1) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred eighty (180) days or less than ninety (90) days before filing the report, stating that the holder is in possession of property subject to this subchapter, if:

(A) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(B) the claim of the apparent owner is not barred by a statute of limitations; and

(C) the value of the property is fifty dollars ($50.00) or more.

(2) If the property presumed abandoned is a security or security entitlement under the Uniform Commercial Code — Investment Securities, § 4-8-101 et seq., or tangible property held in a safe deposit box or other safekeeping depository in this state, the holder shall send the notice required under subdivision (e)(1) of this section by letter.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e).

History. Acts 1999, No. 850, § 7; 2003, No. 491, § 2; 2017, No. 622, § 1.

Amendments. The 2017 amendment redesignated former (e) as (e)(1); in (e)(1), substituted "one hundred eighty (180) days" for "one hundred twenty (120) days" and "ninety (90) days" for "sixty (60) days"; redesignated former (e)(1) through (e)(3) as (e)(1)(A) through (e)(1)(C); and added (e)(2).

18-28-212. Public sale of abandoned property.

(a)(1) Except as otherwise provided in this section, the administrator, within three (3) years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale.

(2) A sale held under this section must be preceded by a single publication of notice, at least three (3) weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. However, the administrator is not required to publish notice under this section if the abandoned property will be sold through an Internet auction.

(b)(1)(A) Securities listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale.

(B) Other securities may be sold over the counter at prices prevailing at the time of sale or by a reasonable method selected by the administrator.

(2) The administrator may sell securities upon receipt of the securities from the holder.

(3)(A) A person making a claim under this subchapter is entitled to receive the:

(i) Securities delivered by the holder to the administrator if the securities still remain in the custody of the administrator; or

(ii) Proceeds received from the sale of the securities, less any fees and expenses incurred from the sale.

(B) A person may not maintain an action or bring a proceeding for any appreciation or depreciation in the value of the securities that may occur after delivery by the holder to the administrator against:

(i) The state;

(ii) The administrator;

(iii) The holder;

(iv) A securities transfer agent;

(v) An auctioneer; or

(vi) An agent acting for or on behalf of the holder or administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this subchapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History. Acts 1999, No. 850, § 12; 2005, No. 175, § 2; 2019, No. 492, § 1.

Amendments. The 2019 amendment subdivided (b) into (b)(1) and (b)(2); rewrote (b)(2) and added (b)(3); and made stylistic changes.

18-28-213. Deposit of funds. — Definition.

(a)(1) The funds received under this subchapter, including the proceeds from the sale of abandoned property, shall be deposited by the administrator into a special trust fund to be known as the "Unclaimed Property Proceeds Trust Fund", from which he or she shall make prompt payment of claims allowed by him or her as provided under this subchapter.

(2) The funds shall be deposited into accounts in one (1) or more financial institutions authorized to do business in this state and may then be transferred into the State Treasury Money Management Trust to be administered in accordance with the laws of this state.

(3)(A) Before making the deposit, the administrator shall record:

(i) The name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property;

(ii) The name and last known address of each insured or annuitant; and

(iii) The policy or contract number, the name of the life insurance corporation, and the amount due under each policy or contract listed in the report of a life insurance corporation.

(B) The record shall be available for public inspection at all reasonable business hours.

(b) At the end of each fiscal year, the administrator shall withdraw from the Unclaimed Property Proceeds Trust Fund an amount necessary to reimburse the State Central Services Fund, or its successor fund or fund account, for moneys expended for personal services and operating expenses of administering and enforcing this subchapter.

(c)(1)(A)(i) At least one (1) time each fiscal year, the administrator shall transfer to the treasurer of the reporting county all funds collected from that county that have not been claimed and that have been held for a full three (3) years.

(ii) The funds received by the treasurer shall be deposited into the general fund of the reporting county.

(iii) The reporting county may use the funds for any purpose for which it may use general revenues.

(B)(i) After the administrator returns funds to the county, the state is released from its indemnity of the county under § 18-28-210(b) and (f).

(ii) The county receiving the funds shall maintain an accounting of the funds in perpetuity, unless payment upon a valid claim is made.

(iii) If the rightful owner or the owner's heirs or assigns ever appear and petition the county for the return of the funds after providing proof of ownership, the county shall pay the funds to the rightful owner from the general fund of the county.

(iv) For purposes of this section, "proof of ownership" means a finding by a court of competent jurisdiction that the person petitioning the county is, in fact, the rightful owner, heir, or assignee.

(2) At least one (1) time each fiscal year, the administrator shall transfer to the general revenues of the state all remaining funds that have been collected and held for a full three (3) years, less the amount transferred to the State Central Services Fund, or its successor fund or fund account, as required by this subchapter.

(d) Each bank depository of unclaimed property funds shall secure the funds to the extent of the amount of the balance of the funds any time on hand and in such manner as the administrator shall require.

History. Acts 1999, No. 850, § 13; 2001, No. 1261, § 2; 2003, No. 1033, § 1; 2011, No. 616, § 1; 2019, No. 325, § 1.

Amendments. The 2019 amendment rewrote (a).

Subchapter 4 — Mineral Proceeds

SECTION.
18-28-403. Abandoned mineral proceeds — Disposition of funds.

Effective Dates. Acts 2019, No. 325, § 4: Mar. 6, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that under the current provisions of the Unclaimed Property Act, § 18-28-201 et seq., the Auditor of State may not deposit unclaimed property funds with the State Treasurer for investment purposes; and that the unclaimed property funds are currently held in the Unclaimed Property Proceeds Trust Fund accruing minute interest; that the authority to invest funds in the State Treasury Money Management Trust will generate a greater financial return to be used for the benefit of the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

18-28-403. Abandoned mineral proceeds — Disposition of funds.

(a)(1)(A) All mineral proceeds that are held or owing by the holder and that have remained unclaimed by the owner for longer than three (3) years after the mineral proceeds became payable or distributable are presumed abandoned.

(B) Abandoned mineral proceeds are subject to the unclaimed property provisions of the Unclaimed Property Act, § 18-28-201 et

seq., except that funds received by the Auditor of State under this section shall be deposited by the Auditor of State into a special trust fund to be known as the "Abandoned Mineral Proceeds Trust Fund".

(C) The funds shall be deposited into accounts in one (1) or more financial institutions authorized to do business in this state and may then be transferred into the State Treasury Money Management Trust to be administered in accordance with the laws of this state.

(2)(A) However, upon petition of the county attorney of the county in which the abandoned minerals were produced or severed, abandoned mineral proceeds that are held pursuant to leases executed by receivers or their successors appointed by a court of proper jurisdiction, shall be remitted by the holder to the county in which the minerals were produced or severed and deposited into the county general fund.

(B) The county attorney shall publish notice of his or her petition in a legal newspaper having general circulation in the county, and the notice shall be published at least one (1) time.

(3) The holder of abandoned mineral proceeds turned over to the Auditor of State under this section shall provide the following information to the Auditor of State:

(A) The name and last known address of the property owner;

(B) The applicable well name, uncontrolled lease name, or unitized area name as recognized by the Oil and Gas Commission;

(C) Either:

(i) The county, section, township, and range of the well; or

(ii) The county, section, township, and range from which the abandoned minerals were severed or produced; and

(D) Any other information required by the Auditor of State.

(b) The Abandoned Mineral Proceeds Trust Fund shall be used by the Auditor of State to pay the claims of persons establishing ownership of mineral proceeds in possession of the state under this subchapter and for the enforcement and administration of this subchapter. At least one (1) time each fiscal year, the Auditor of State shall transfer to the County Aid Fund in the State Treasury all funds in the Abandoned Mineral Proceeds Trust Fund in excess of an amount determined by the Auditor of State to be sufficient to pay the anticipated expenses and claims of the Abandoned Mineral Proceeds Trust Fund.

(c)(1) Funds credited to the County Aid Fund pursuant to the provisions of this subchapter shall annually be equally distributed among all the counties in the state by the Treasurer of State.

(2) All funds remitted to the respective counties shall be credited to the county general fund.

History. Acts 1987, No. 362, § 2; 1987 (1st Ex. Sess.), No. 35, § 1; 1989, No. 904, § 1; 1989 (3rd Ex. Sess.), No. 39, § 2; 1993, No. 1153, § 12; 1995, No. 748, § 1; 2003, No. 1307, § 1; 2013, No. 1130, § 10; 2015, No. 1039, § 3; 2019, No. 325, § 2.

Amendments. The 2019 amendment, in (a)(1)(C), inserted "and may then be transferred into the State Treasury Money Management Trust", deleted "pertaining to the appropriation, administration, and expenditure of cash funds" fol-

lowing the second occurrence of "state", and made stylistic changes.

SUBTITLE 4. MORTGAGES AND LIENS

CHAPTER 41

LANDLORDS' LIENS

18-41-101. Lien on crop — Period effective — Definition.

(a) Every landlord shall have a lien upon the crop grown upon the demised premises in any year for rent that shall accrue for the year.

(b)(1) The lien is perfected and shall have priority over a conflicting security interest in or agricultural lien on the crop regardless of when the conflicting security interest or agricultural lien is perfected.

(2) The lien shall continue for six (6) months after the last installment of rent under the rental agreement becomes due and payable, and no longer.

(c)(1) As used in this section, "rent" means all payments to be made to the landlord under the rental agreement.

(2) "Rent" includes a payment paid on behalf of the tenant by a government agency or other entity.

History. Acts 1868, No. 67, § 1, p. 245; C. & M. Dig., § 6889; Pope's Dig., § 8845; A.S.A. 1947, § 51-201; Acts 2003, No. 32, § 3; 2017, No. 569, §§ 1, 2.

Amendments. The 2017 amendment substituted "last installment of rent under the rental agreement becomes" for "rent shall become" in (b)(2); and added (c).

18-41-103. Lien for advances — Enforcement.

(a)(1) In addition to the lien given by law to landlords, if any landlord, to enable his or her tenant or employee to make and gather the crop, shall advance the tenant or employee any necessary supplies, either of money, provisions, clothing, stock, or other necessary articles, the landlord shall have a lien upon the crop raised upon the premises for the value of the advances.

(2) The lien is perfected and shall have priority over a conflicting security interest in or agricultural lien on the crop regardless of when the conflicting security interest or agricultural lien is perfected.

(b) This lien shall have preference over any mortgage or other conveyance of the crop made by the tenant or employee.

(c) This lien may be enforced by an action of attachment before any court having jurisdiction, and the lien for advances and for rent may be joined and enforced in the same action.

History. Acts 1885, No. 134, § 1, p. 225; C. & M. Dig., § 6890; Pope's Dig., § 8846; A.S.A. 1947, § 51-203; Acts 2003, No. 32, § 4; 2017, No. 757, § 1.

Amendments. The 2017 amendment deleted "or justice of the peace" preceding "having jurisdiction" in (c).

18-41-108. Attachment to enforce.

(a) Any landlord who has a lien on the crop for rent shall be entitled to bring suit before a circuit court having jurisdiction and have a writ of attachment for the recovery of it, whether the rent is due or not, in the following cases:

(1) If the tenant is about to remove the crop from the premises without paying the rent; or

(2) If he or she has removed the crop, or any portion thereof, without the consent of the landlord.

(b)(1) Before the writ of attachment is issued, the landlord or his or her agent or attorney shall file an affidavit of one (1) of the facts under subdivision (a)(1) or subdivision (a)(2) of this section, that the amount claimed is or will be due for rent, or will be the value of the portion of the crop agreed as rent, stating the time the rent became or would become due and that he or she has a lien on the crop for rent.

(2) The landlord or his or her agent or attorney shall file with the clerk of the court a bond to the defendant, with sufficient security, in double the amount of his or her claim as sworn to, conditioned that he or she will prove his or her debt or demand and his or her lien in a trial, or that he or she will pay damages against him or her.

(c) The writ of attachment may be levied on the crop in the possession of the tenant or anyone holding it in his or her right or in the possession of a purchaser from him or her with notice of the lien of the landlord.

(d) If the rent is not due at the commencement of the suit, the trial shall be stayed until it becomes due, and the attachment, at any time before final trial, may be dissolved in the manner prescribed by law, and the cause proceed as other suits.

History. Acts 1860, No. 51, §§ 1-4, p. 101; C. & M. Dig., §§ 6897-6900; Pope's Dig., §§ 8853-8856; A.S.A. 1947, §§ 51-206 — 51-209; Acts 2017, No. 757, § 2.

Amendments. The 2017 amendment, in the introductory language of (a), substituted "circuit court having jurisdiction" for "justice of the peace or in the circuit court, as the case may be"; substituted "If" for "When" in (a)(1) and (a)(2); in (b)(1), substituted "is issued" for "shall issue", deleted "make and" preceding "file", substituted "under" for "provided for in", and deleted "which shall be therein stated" following "claimed", "to be received" following "agreed", and "when" following "the time"; in (b)(2), substituted "the clerk of the court" for "the justice or clerk, as the case may be", and deleted "of law" following "trial" and "as shall be adjudged" following "damages"; and substituted "If the rent is not due" for "If the rent shall not be due" in (d).

CHAPTER 42

LIENS OF EMPLOYERS AND EMPLOYEES UNDER CONTRACT

SECTION.
18-42-109. Proceedings to enforce liens.

18-42-109. Proceedings to enforce liens.

Proceedings for the enforcement of liens under this chapter are governed in the circuit court by the law regulating mechanics' liens.

History. Acts 1883, No. 96, § 7, p. 176; C. & M. Dig., § 6887; Pope's Dig., § 8843; A.S.A. 1947, § 51-509; Acts 2017, No. 757, § 3.

Amendments. The 2017 amendment substituted "under this chapter are" for "provided for in this chapter shall be", and deleted "and before justices of the peace by the law regulating attachments before justices" following "liens" at the end.

CHAPTER 43

LABORERS' LIENS GENERALLY

SECTION.
18-43-106. Filing of sworn statement.
18-43-107. Notice of action.

18-43-106. Filing of sworn statement.

(a)(1) Every person who has a lien as provided in this section and §§ 18-43-101, 18-43-104, 18-43-105, 18-43-107—18-43-110, and 18-43-112—18-43-117 and wishes to avail himself or herself of the lien by an action before a court having jurisdiction.

(2)(A) The claimant shall make a sworn statement of the amount due after all just credits are given, to the best of his or her knowledge and belief, and state the kind of service, and for whom rendered, materials furnished, etc. The statement shall also contain a list of land, property, crops, or other productions of his or her labor charged.

(B) The truth of the sworn statement may be put in issue as in cases of attachment.

(b) The justice of the peace shall keep the statement on file and shall enter a brief of the case on his or her judgment docket.

History. Acts 1868, No. 64, §§ 5, 7, p. 224; C. & M. Dig., §§ 6849, 6850, 6852; Pope's Dig., §§ 8805, 8806, 8808; A.S.A. 1947, §§ 51-302, 51-304; Acts 2017, No. 757, § 4.

Amendments. The 2017 amendment substituted "by an action before a court having jurisdiction" for "shall, if the amount is less than one hundred dollars ($100), and may, at his or her own discretion, if the amount does not exceed three hundred dollars ($300), go before any justice of the peace in the county where the lien exists" in (a)(1).

18-43-107. Notice of action.

(a)(1) The party initiating the action shall cause notice to be given to the defendant in the usual way.

(2) However, if the defendant is a nonresident, the notice will be given by at least two (2) insertions in the county newspaper or by posting three (3) notices, two (2) in the most public places in the township where the property is and the other at the county clerk's office, to appear and show cause why judgment shall not be rendered and the property sold.

(b) Notice shall be given at least ten (10) days before the day of trial and must be accompanied by a copy of the sworn statement of the plaintiff.

History. Acts 1868, No. 64, § 6, p. 224; C. & M. Dig., § 6851; Pope's Dig., § 8807; A.S.A. 1947, § 51-303; Acts 2017, No. 757, § 5.

Amendments. The 2017 amendment substituted "The party initiating the action" for "The justice of the peace" in (a)(1).

CHAPTER 44

MECHANICS' AND MATERIALMEN'S LIENS

SUBCHAPTER.
1. General Provisions.
5. Bonds.

Subchapter 1 — General Provisions

18-44-106. "Owner" defined.

CASE NOTES

Cited: Fla. Oil Inv. Grp., LLC v. Goodwin & Goodwin, Inc., 2016 Ark. App. 380, 499 S.W.3d 674 (2016).

18-44-115. Notice to owner by contractor — Definitions.

(a)(1) No lien upon residential real estate containing four (4) or fewer units may be acquired by virtue of this subchapter unless the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent has received, by personal delivery or by certified mail, a copy of the notice set out in this subsection.

(2) The notice required by this subsection shall not require the signature of the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent in an instance when the notice is delivered by certified mail.

(3) It shall be the duty of the residential contractor to give the owner, the owner's authorized agent, or the owner's registered agent the notice set out in this subsection on behalf of all potential lien claimants before the commencement of work.

(4) If a residential contractor fails to give the notice required under this subsection, then the residential contractor is barred from bringing an action either at law or in equity, including without limitation quantum meruit, to enforce any provision of a residential contract.

(5)(A) Any potential lien claimant may also give notice.

(B)(i) If before commencing work or supplying goods a subcontractor, material supplier, laborer, or other lien claimant gives notice under this section, the notice shall be effective for all subcontractors, material suppliers, laborers, and other lien claimants not withstanding that the notice was given after the project commences as defined under § 18-44-110(a)(2).

(ii) If the notice relied upon by a lien claimant to establish a lien under this subchapter is given by another lien claimant under subdivision (a)(5)(B)(i) of this section after the project commences, the lien of the lien claimant shall secure only the labor, material, and services supplied after the effective date of the notice under subdivision (a)(5)(B)(i) of this section.

(C) However, no lien may be claimed by any subcontractor, laborer, material supplier, or other lien claimant unless the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent has received at least one (1) copy of the notice, which need not have been given by the particular lien claimant.

(6) A residential contractor who fails to give the notice required by this subsection is guilty of a violation pursuant to § 5-1-108 and upon pleading guilty or nolo contendere to or being found guilty of failing to give the notice required by this subsection shall be punished by a fine not exceeding one thousand dollars ($1,000).

(7) The notice set forth in this subsection may be incorporated into the contract or affixed to the contract and shall be conspicuous, set out in boldface type, worded exactly as stated in all capital letters, and shall read as follows:

"IMPORTANT NOTICE TO OWNER

I UNDERSTAND THAT EACH CONTRACTOR, SUBCONTRACTOR, LABORER, SUPPLIER, ARCHITECT, ENGINEER, SURVEYOR, APPRAISER, LANDSCAPER, ABSTRACTOR, OR TITLE INSURANCE AGENT SUPPLYING LABOR, SERVICES, MATERIAL, OR FIXTURES IS ENTITLED TO A LIEN AGAINST THE PROPERTY IF NOT PAID IN FULL FOR THE LABOR, SERVICES, MATERIALS, OR FIXTURES USED TO IMPROVE, CONSTRUCT, OR INSURE OR EXAMINE TITLE TO THE PROPERTY EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE CONTRACTOR. I

REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY SERVICES, FIXTURES, MATERIALS, OR LABOR NOT PAID FOR. I KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR TO FURNISH TO ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS AND SERVICE PROVIDERS UNDER THE CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF ALL MATERIALS, LABOR, FIXTURES, AND SERVICES FURNISHED FOR THE PROPERTY HAVE BEEN PAID FOR. I MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT LIEN WAIVERS BY ALL SUPPLIERS AND SERVICE PROVIDERS, STATING THAT THEY HAVE BEEN PAID IN FULL FOR SUPPLIES AND SERVICES PROVIDED UNDER THE CONTRACT, BEFORE I PAY THE CONTRACTOR IN FULL. IF A SUPPLIER OR OTHER SERVICE PROVIDER HAS NOT BEEN PAID, I MAY PAY THE SUPPLIER OR OTHER SERVICE PROVIDER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

SIGNED:_____

ADDRESS OF PROPERTY_____

DATE:_____

I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER, REGISTERED AGENT OF THE OWNER, OR AUTHORIZED AGENT OF THE OWNER OF THE PROPERTY AT THE ADDRESS SET OUT ABOVE.

_____

CONTRACTOR"

(8)(A) If the residential contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner, the notice requirement of this subsection shall not apply, and the lien rights arising under this subchapter shall not be conditioned on the delivery and execution of the notice.

(B) A sale shall be a direct sale only if:

(i) The property owner orders materials or services from the lien claimant; and

(ii) The lien claimant is not a home improvement contractor as defined by § 17-25-502(1) or a residential building contractor as defined by § 17-25-502(2).

(b)(1)(A) The General Assembly finds that owners and developers of commercial real estate are generally knowledgeable and sophisti-

cated in construction law, are aware that unpaid laborers, subcontractors, and material suppliers are entitled to assert liens against the real estate if unpaid, and know how to protect themselves against the imposition of mechanics' and material suppliers' liens.

(B) The General Assembly further finds that consumers who construct or improve residential real estate containing four (4) or fewer units generally do not possess the same level of knowledge and awareness and need to be informed of their rights and responsibilities.

(2) As used in this subsection:

(A) "Commercial real estate" means:

(i) Nonresidential real estate; and

(ii) Residential real estate containing five (5) or more units; and

(B) "Service provider" means an architect, an engineer, a surveyor, an appraiser, a landscaper, an abstractor, or a title insurance agent.

(3) Because supplying the notice specified in subsection (a) of this section imposes a substantial burden on laborers, subcontractors, service providers, and material suppliers, the notice requirement mandated under subsection (a) of this section as a condition precedent to the imposition of a lien by a laborer, subcontractor, service provider, or material supplier shall apply only to construction of or improvement to residential real estate containing four (4) or fewer units.

(4) No subcontractor, service provider, material supplier, or laborer shall be entitled to a lien upon commercial real estate unless the subcontractor, service provider, material supplier, or laborer notifies the owner of the commercial real estate being constructed or improved, the owner's authorized agent, or the owner's registered agent in writing that the subcontractor, service provider, material supplier, or laborer is currently entitled to payment but has not been paid.

(5)(A) The notice shall be sent to the owner, the owner's authorized agent, or the owner's registered agent and to the contractor before seventy-five (75) days have elapsed from the time that the labor was supplied or the materials furnished.

(B) The notice may be served by any:

(i) Officer authorized by law to serve process in civil actions;

(ii) Form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee; or

(iii) Means that provides written, third-party verification of delivery at any place where the owner, the owner's registered agent, or the owner's authorized agent maintains an office, conducts business, or resides.

(C) When served by mail, the notice shall be complete when mailed.

(D) If delivery of the mailed notice is refused by the addressee or the item is unclaimed:

(i) The lien claimant shall immediately send the owner, the owner's authorized agent, or the owner's registered agent a copy of the notice by first class mail; and

(ii) The unopened original of the item marked unclaimed or refused by the United States Postal Service shall be accepted as proof of service as of the postmarked date of the item.

(6) The notice shall contain the following information:

(A) A general description of the labor, service, or materials furnished, and the amount due and unpaid;

(B) The name and address of the person furnishing the labor, service, or materials;

(C) The name of the person who contracted for purchase of the labor, service, or materials;

(D) A description of the job site sufficient for identification; and

(E) The following statement set out in boldface type and all capital letters:

"NOTICE TO PROPERTY OWNER

IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT OR PROVIDE SERVICES FOR AN IMPROVEMENT TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE PLACED AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED. THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY."

History. Acts 1979, No. 746, §§ 1-5; 1981, No. 669, § 1; 1983, No. 304, § 1; A.S.A. 1947, §§ 51-608.1 — 51-608.6; Acts 1995, No. 1298, § 7; 2005, No. 1994, § 98; 2005, No. 2287, § 3; 2009, No. 454, § 3; 2011, No. 271, § 5; 2017, No. 808, § 1.

Amendments. The 2017 amendment added (a)(8)(B)(ii); and made stylistic changes.

CASE NOTES

Applicability.

Under the plain wording of subdivision (a)(8)(A) of this section, to the extent a homeowner had ordered materials or services directly from a contractor, those transactions constituted direct sales, and the contractor was not required to give the homeowner statutory notice as the homeowner was in direct privity of contract with the direct-sale contractor, and there were no undisclosed suppliers or laborers. Hammerhead Contr. & Dev., LLC v. Ladd, 2016 Ark. 162, 489 S.W.3d 654 (2016).

18-44-117. Filing of lien.

(a)(1) A person who wishes to avail himself or herself of the provisions of this subchapter has a duty to file with the clerk of the circuit court of the county in which the building, erection, or other improvement to be charged with the lien is situated and within one hundred twenty (120) days after the things specified in this subchapter have been furnished or the work or labor done or performed:

(A) A just and true account of the demand due or owing to him or her after allowing all credits; and

(B) An affidavit of notice attached to the lien account.

(2)(A) The lien account shall contain a correct description of the property to be charged with the lien, verified by affidavit.

(B) For real property, a street address is not a correct description of the property under subdivision (a)(2)(A) of this section.

(3) The affidavit of notice shall contain:

(A) A sworn statement evidencing compliance with the applicable notice provisions of §§ 18-44-114 — 18-44-116;

(B) A copy of each applicable notice given under §§ 18-44-114 — 18-44-116; and

(C) A copy of the proof of service required under § 18-44-114.

(b)(1)(A) The clerk of the circuit court has a duty to endorse upon every account the date of its filing and to make an abstract of the account in a book kept by him or her for that purpose, properly indexed.

(B) This abstract shall contain:

(i) The date of the filing;

(ii) The name of the person laying or imposing the lien;

(iii) The amount of the lien;

(iv) The name of the person against whose property the lien is filed; and

(v) A description of the property to be charged with the lien.

(C) For real property, a street address is not a sufficient description under subdivision (b)(1)(B) of this section.

(2) For this service, the person laying or imposing the lien shall submit the fee required by § 21-6-306 to the clerk of the circuit court, and the fee shall be taxed and collected as other costs in case there is a suit on the lien.

(3) The clerk of the circuit court shall not file a lien account that does not contain the affidavits and attachments required by this section.

History. Acts 1895, No. 146, §§ 11, 12, p. 217; C. & M. Dig., §§ 6922, 6923; Pope's Dig., §§ 8881, 8882; Acts 1945, No. 55, § 2; 1961, No. 239, § 1; 1963, No. 124, § 1; 1977, No. 333, § 3; A.S.A. 1947, §§ 12-1720, 51-613, 51-614; Acts 2005, No. 2287, § 1; 2007, No. 810, § 1; 2009, No. 454, § 3; 2019, No. 806, § 1.

Amendments. The 2019 amendment redesignated (a)(2) as (a)(2)(A) and added (a)(2)(B); added (a)(3)(C); added (b)(1)(C); rewrote (b)(2); substituted "clerk of the circuit court shall not" for "clerk shall refuse to" in (b)(3); and made stylistic changes.

18-44-128. Attorney's fee.

CASE NOTES

Prevailing Party.

Subsection (b) of this section did not limit recovery of attorney's fees to those owners who received notice of the intent to file a lien, who owned at the time the lien was filed, or who owned the property before the lawsuit was filed, but rather, it applied to an owner who was a prevailing party. Thus, a party who had purchased the property after the lien was filed and was a prevailing party was entitled to attorney's fees. Fla. Oil Inv. Grp., LLC v. Goodwin & Goodwin, Inc., 2016 Ark. App. 380, 499 S.W.3d 674 (2016).

Subchapter 5 — Bonds

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

18-44-502. Exemption.

This subchapter shall not apply to any contract executed by the Arkansas Department of Transportation.

History. Acts 1953, No. 351, § 7; A.S.A. 1947, § 51-638; Acts 2017, No. 707, § 40.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

18-44-503. Public buildings and improvements.

(a) A contract in a sum exceeding the amount stated in § 22-9-203 providing for the repair, alteration, or erection of any public building, public structure, or public improvement shall not be entered into by the State of Arkansas or any subdivision of the state, by any county, municipality, school district, or other local taxing unit, or by any agency of the state, a subdivision of the state, a county, a municipality, a school district, or any other local taxing unit, unless the contractor shall

furnish to the party letting the contract a bond in a sum equal to the amount of the contract.

(b) All persons, firms, associations, and corporations who have valid claims against the bond may bring an action on the bond against the corporate surety, provided that no action shall be brought on the bond after twelve (12) months from the date on which the Building Authority Division or institutions exempt from construction review and approval by the division approve final payment on the state contract, nor shall any action be brought outside the State of Arkansas.

History. Acts 1953, No. 351, § 1; 1957, No. 209, § 1; 1969, No. 468, § 1; 1979, No. 539, § 1; A.S.A. 1947, § 51-632; Acts 1987, No. 757, § 1; 2001, No. 961, § 2; 2015 (1st Ex. Sess.), No. 7, § 8; 2015 (1st Ex. Sess.), No. 8, § 8; 2019, No. 658, § 1; 2019, No. 910, § 6078.

Amendments. The 2019 amendment by No. 658, in (a), substituted "the amount stated in § 22-9-203" for "twenty thousand dollars ($20,000)", substituted "the state, a subdivision of the state, a county, a municipality, a school district, or any other local taxing unit" for "any of the foregoing", and made stylistic changes.

The 2019 amendment by No. 910, in (b), deleted "of the Department of Finance and Administration" following "Building Authority Division".

CHAPTER 45

ARTISAN'S AND REPAIRMEN'S LIENS

SUBCHAPTER.

1. General Provisions.
2. Blacksmiths, Vehicle Repairmen, Etc.

Subchapter 1 — General Provisions

SECTION.

18-45-101. Right of mechanics and artisans to sell personalty held for debt.

(a) All mechanics and artisans who are in possession of articles of personal property, and hold them by virtue of a lien thereon for labor and material, shall have a right to sell them for the satisfaction of the debt for which the property is held.

(b) Lienholders shall give a bond in the sum to be fixed by a circuit court with proper jurisdiction before they shall proceed to sell, by proceeding in accordance with the requirements of this section.

(c)(1) The sale shall not take place until the expiration of thirty (30) days from the time the work is completed.

(2)(A) If the debt is not paid at the end of that time, it shall be the duty of the lienholder, not less than ten (10) days before making the sale, to post up a written notice of the proposed sale at or near the front of his or her place of business, or, in case he or she has no place of business, at five (5) of the most public places in the township.

(B) This notice of the proposed sale shall specify the property to be sold, the name of the owner or debtor, and the time and place of sale.

(C) The notice shall be signed by the lienholder.

(d) At the sale, which shall be at public auction for cash, the lienholder shall have the right to bid not less than the amount of his or her debt. In case the property sells for more than the amount due, he or she shall pay over the surplus on demand to the person entitled thereto.

(e) In case the place of residence or post office address of the debtor is known to the lienholder, it shall be his or her duty, besides giving the notice as required in subsection (c) of this section, to make demand for the debt before making the sale, either in person or by letter.

(f) In all the lienholder's dealings with the property held by him or her, the lienholder shall act in good faith with the debtor and shall be responsible for any abuse of the powers and authority vested in him or her by the provisions of this section.

History. Acts 1899, No. 58, §§ 1-3, p. 108; C. & M. Dig., §§ 6875-6877; Pope's Dig., §§ 8831-8833; A.S.A. 1947, §§ 51-401 — 51-403; Acts 2017, No. 299, § 2; 2017, No. 757, § 6.

Amendments. The 2017 amendment by No. 299 substituted "circuit court with proper jurisdiction" for "justice of the peace or circuit judge" in (b).

The 2017 amendment by No. 757 deleted "justice of the peace or" preceding "circuit judge" in (b).

Subchapter 2 — Blacksmiths, Vehicle Repairmen, Etc.

SECTION.

18-45-205. Filing of notice and bond required.

(a)(1) The lienholder shall file with a circuit court having jurisdiction a notice under § 18-45-204 to be posted.

(2) The circuit court shall note in the notice the amount of a bond, for the protection of the debtor or property owner, if the lienholder is not entitled to the lien and for the payment of damages if the sale is wrongfully made.

(b) The lienholder shall file a bond so conditioned and in such sum with the circuit court, and the surety thereon shall be approved by the circuit court before making the sale under this subchapter.

History. Acts 1919, No. 140, § 5, p. 123; C. & M. Dig., § 6870; Pope's Dig., § 8826; A.S.A. 1947, § 51-408; Acts 2017, No. 299, § 3; 2017, No. 757, § 7.

Amendments. The 2017 amendment by No. 299 substituted "the circuit court having jurisdiction" for "one (1) of the justices of the peace in the township" in (a)(1); substituted "circuit court" for "justice" in (a)(2); and substituted "circuit court" for "justice of the peace" twice in (b).

The 2017 amendment by No. 757 substituted "a court having jurisdiction a notice under" for "one (1) of the justices of the peace in the township where his or her place of business is located a notice similar to the ones required in" in (a)(1); in (a)(2), substituted "The court" for "The justice", "in" for "upon", and "if" for "in the event"; in (b), substituted "court" for "justice of the peace" twice and "under" for "provided for in" once; and made stylistic changes.

18-45-207. Suits to enforce liens — Attachment.

CASE NOTES

Jurisdiction.

Circuit court's civil contempt citation against the body shop owner for failing to deliver the car title as ordered was affirmed where the circuit court decided the case under § 18-45-201 et seq., which expressly vested it with subject-matter jurisdiction, the owner was afforded the opportunity to be heard at a meaningful time and in a meaningful manner, counsel's statements about the attempts to secure the title were deemed credible, and the owner had willfully disobeyed the court's order to turn over the title. Ransom v. JMC Leasing Specialties, LLC, 2016 Ark. App. 509, 505 S.W.3d 737 (2016).

CHAPTER 46

MEDICAL, NURSING, HOSPITAL, AND AMBULANCE SERVICE LIEN ACT

SECTION.

18-46-104. Extent of lien.

On compliance with the requirements of this chapter, a practitioner, a nurse, an orthotist, a prosthetist, a pedorthist, a hospital, and an ambulance service provider shall each have a lien:

(1) For the value of the service rendered and to be rendered by the practitioner, nurse, orthotist, prosthetist, pedorthist, hospital, or ambulance service provider to a patient, at the express or implied request of that patient or of someone acting on his or her behalf, for the relief and cure of an injury suffered through the fault or neglect of someone other than the patient himself or herself;

(2) On any claim, right of action, and money to which the patient is entitled because of that injury, and to costs and attorney's fees incurred in enforcing that lien; and

(3) For the cost of a prosthesis, orthotic, pedorthic device, or medical appliance provided to the patient.

History. Acts 1933, No. 130, § 2; Pope's Dig., §§ 7990, 10819; A.S.A. 1947, § 51-802; Acts 1993, No. 271, § 3; 2019, No. 890, § 1.

Amendments. The 2019 amendment inserted "an orthotist, a prosthetist, a pedorthist" in the first paragraph, and made a similar change in (1); and added (3).

CASE NOTES

Applicability.

District court erred in applying Arkansas law as a basis for dismissing plaintiff's suit seeking relief for the alleged impairment of its hospital lien by a decedent's estate that had settled a wrongful death claim without paying the decedent's medical bills, because Arkansas's interest did

not outweigh concerns about forum shopping and maintenance of interstate order that favored the application of Tennessee law to plaintiff's lien impairment claim. Shelby Cnty. Health Care Corp. v. Southern Farm Bureau Cas. Ins. Co., 855 F.3d 836 (8th Cir.), cert. denied, 138 S. Ct. 473, 199 L. Ed. 2d 358 (U.S. 2017).

18-46-114. Release on satisfaction or waiver of lien required.

(a) If a lien has been satisfied or waived, the practitioner, nurse, hospital, or ambulance service provider that established or waived it shall, on written demand and at the expense of the patient, or the person by whom the patient was injured, or by the insurer obligated by reason of the injury, give a written release acknowledged before a notary public.

(b)(1) Any practitioner, nurse, hospital, or ambulance service provider that refuses or fails under the circumstances stated, for a period of five (5) days or more after a written demand is made for a release, to execute and deliver the release is liable to the demandant for injury or damage that results from refusal or failure.

(2) He or she shall forfeit to the demandant the sum of twenty-five dollars ($25.00), which may be recovered in an action for damages because of the failure, or in a civil action before a court having jurisdiction, as the circumstances of the case require.

History. Acts 1933, No. 130, § 9; Pope's Dig., §§ 7997, 10826; A.S.A. 1947, § 51-809; Acts 1993, No. 271, § 12; 2017, No. 757, § 8.

Amendments. The 2017 amendment, in (a), substituted "If" for "When" and "acknowledged before a notary public" for "duly acknowledged before a justice of the peace or notary public"; in (b)(1), substituted "is liable" for "shall be liable" and deleted "any" preceding "injury"; and, in (b)(2), substituted "He" for "In any event he", "an action" for "any action", and "court having jurisdiction" for "justice of the peace".

CHAPTER 48

MISCELLANEOUS LIENS ON PERSONAL PROPERTY

SUBCHAPTER.
3. Animals — Services of Male Animal.

Subchapter 3 — Animals — Services of Male Animal

SECTION.
18-48-303. Filing of claim — Summons.

18-48-303. Filing of claim — Summons.

(a)(1) At any time within twenty (20) months after the right of action accrues, the owner of the male animal may bring a civil action before a court having jurisdiction.

(2) The petition shall be verified and set forth the amount of the claim, the cause of action, and a description of the animal upon which there is a lien.

(b) The court shall issue summons as in other cases and embody in the summons a description of the animal and an order to the law enforcement officer to take the animal and her offspring, if there is offspring, and hold it or them subject to the order of the court.

History. Acts 1909, No. 252, § 2, p. 756; C. & M. Dig., § 6938; Pope's Dig., § 8900; A.S.A. 1947, § 51-906; Acts 2017, No. 757, § 9.

Amendments. The 2017 amendment substituted "bring a civil action before a court having jurisdiction" for "file a written statement with any justice of the peace in the county" in (a)(1); substituted "The petition shall be verified and set forth" for "This statement shall be duly verified and shall set forth" in (a)(2); and, in (b), substituted "The court shall issue" for "The justice shall thereupon issue" and "law enforcement officer" for "constable".

CHAPTER 49

ENFORCEMENT OF MORTGAGES, DEEDS OF TRUST, AND VENDORS' LIENS

18-49-104. Sale of property under court order and publication of notice of sales.

RESEARCH REFERENCES

ALR. Action for Damages for Attempted Wrongful Foreclosure. 104 A.L.R.6th 485 (2015).

CHAPTER 50

STATUTORY FORECLOSURES

RESEARCH REFERENCES

ALR. Action for Damages for Attempted Wrongful Foreclosure. 104 A.L.R.6th 485 (2015).

Ark. L. Rev. Nate Coulter, 2013-14 University of Arkansas School of Law Student-Run Clinics Yield Policy Insights and Practical Foreclosure Advice to Homeowners, 68 Ark. L. Rev. 551 (2015).

18-50-103. Conditions to exercise of power of sale.

RESEARCH REFERENCES

Ark. L. Rev. Nate Coulter, 2013-14 University of Arkansas School of Law Student-Run Clinics Yield Policy Insights and Practical Foreclosure Advice to Homeowners, 68 Ark. L. Rev. 551 (2015).

18-50-104. Prerequisites for foreclosure sale — Contents of notice of sale — Persons to receive notice.

RESEARCH REFERENCES

ALR. Action for Damages for Attempted Wrongful Foreclosure. 104 A.L.R.6th 485 (2015).

18-50-107. Manner of sale.

CASE NOTES

Finality of Sale.

Court denied bank's motion for summary judgment on its claim that a house owned by Chapter 13 debtors was not property of their bankruptcy estate because it was sold at a foreclosure sale that was conducted pursuant to this section three days before the debtors declared bankruptcy. While the bank might have been correct that the debtors lost their right of redemption under Arkansas law when the house was sold, it failed to consider the debtors' right to cure a mortgage default under 11 U.S.C. § 1322, and the debtors' house was property of their estate because the trustee had the right under Ark. Code Ann. § 18-50-116 to set aside the sale and the trustee's deed was not recorded until after the debtors declared bankruptcy. In re McAdoo, No. 5:15-bk-72690, 2016 Bankr. LEXIS 4134 (Bankr. W.D. Ark. Nov. 21, 2016).

18-50-112. Deficiency judgment.

RESEARCH REFERENCES

Ark. L. Rev. Nate Coulter, 2013-14 University of Arkansas School of Law Student-Run Clinics Yield Policy Insights and Practical Foreclosure Advice to Homeowners, 68 Ark. L. Rev. 551 (2015).

18-50-116. Miscellaneous provisions.

RESEARCH REFERENCES

Ark. L. Rev. Nate Coulter, 2013-14 University of Arkansas School of Law Student-Run Clinics Yield Policy Insights and Practical Foreclosure Advice to Homeowners, 68 Ark. L. Rev. 551 (2015).

CASE NOTES

Validity of Sale.

Court denied bank's motion for summary judgment on its claim that a house owned by Chapter 13 debtors was not property of their bankruptcy estate because it was sold at a foreclosure sale that was conducted pursuant to § 18-50-107 three days before the debtors declared bankruptcy. While the bank might have been correct that the debtors lost their right of redemption under Arkansas law when the house was sold, it failed to consider the debtors' right to cure a mortgage default under 11 U.S.C. § 1322, and the debtors' house was property of their estate because the trustee had the right under this section to set aside the sale and the trustee's deed was not recorded until after the debtors declared bankruptcy. In re McAdoo, No. 5:15-bk-72690, 2016 Bankr. LEXIS 4134 (Bankr. W.D. Ark. Nov. 21, 2016).

SUBTITLE 5. CIVIL ACTIONS

CHAPTER 60

MISCELLANEOUS PROCEEDINGS RELATING TO PROPERTY

SUBCHAPTER.
5. Quieting Title Generally.
10. Uniform Partition of Heirs Property Act.

Subchapter 2 — Ejectment and Trespass

18-60-201. Right of action generally.

CASE NOTES

Title to Support Ejectment.

Complaint for ejectment was improperly dismissed because an appellate court was unable to determine whether a trial court found that the alleged owners failed to prove a prima facie case for ejectment or whether it failed to shift the burden of proof to the occupants upon a showing of prima facie evidence. King v. Jackson, 2015 Ark. App. 588, 474 S.W.3d 83 (2015).

18-60-206. Proof required to recover.

CASE NOTES

Prima Facie Case.

Complaint for ejectment was improperly dismissed because an appellate court was unable to determine whether a trial court found that the alleged owners failed to prove a prima facie case for ejectment or whether it failed to shift the burden of proof to the occupants upon a showing of prima facie evidence. King v. Jackson, 2015 Ark. App. 588, 474 S.W.3d 83 (2015).

18-60-213. Recovery for improvements and taxes paid on land of another.

CASE NOTES

Analysis

Purchasers at Judicial Sales.
Rents and Profits.

Purchasers at Judicial Sales.

In a case that set aside a foreclosure decree due to improper service on the property owner, the foreclosure sale purchaser's judgment against the foreclosure mortgagee for the costs of the improvements to the property was set aside and judgment was entered against the property owner under subsection (a) of this section for the value of the improvements, where the purchaser had made improvements to the property while believing she was the true owner and under color of title. MidFirst Bank v. Sumpter, 2016 Ark. App. 552, 508 S.W.3d 69 (2016).

Remedy provided by the Betterment Act, § 18-60-213, is against the true owner of the property. MidFirst Bank v. Sumpter, 2016 Ark. App. 552, 508 S.W.3d 69 (2016).

Circuit court erred in awarding a judgment for indemnification in favor of the property owner for Betterment Act damages against the foreclosure mortgagee. The owner had received an increase in value to her property from the improve-

ments made by the foreclosure sale purchaser; and the Betterment Act is not based on contract, consent, or negligence but is a rule for administering justice. MidFirst Bank v. Sumpter, 2016 Ark. App. 552, 508 S.W.3d 69 (2016).

Rents and Profits.

Despite the permissive plain language of subsection (e) of this section, the Arkansas Supreme Court has construed the Betterment Act as not providing for recovery of the value of improvements unless the improvements exceed the rents and profits due the owner. MidFirst Bank v. Sumpter, 2016 Ark. App. 552, 508 S.W.3d 69 (2016).

In a case that set aside a foreclosure decree due to improper service on the property owner, the circuit court erred in calculating the foreclosure sale purchaser's recovery under the Betterment Act by failing to apply a setoff rate, pursuant to subsection (e) of this section, for the rents the foreclosure sale purchaser received. MidFirst Bank v. Sumpter, 2016 Ark. App. 552, 508 S.W.3d 69 (2016).

Subchapter 3 — Forcible Entry and Detainer — Unlawful Detainer

18-60-304. Actions constituting unlawful detainer.

CASE NOTES

Analysis

Claim and Issue Preclusion.
Right to Bring Action.

Claim and Issue Preclusion.

Crawford County Circuit Court erred by dismissing a seller's unlawful-detainer complaint based on the doctrine of claim preclusion because the seller did not have a full and fair opportunity to litigate the unlawful-detainer claim in another county; section 18-60-306 specifically prohibited the seller from asserting his unlawful-detainer claim in Pulaski County, and the Pulaski County Circuit Court correctly determined that it did not have jurisdiction to adjudicate the claim. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Because the parties did not have a full and fair opportunity to litigate all components of an unlawful-detainer action in Pulaski County, the Crawford County Circuit Court was not barred from doing so on the basis of issue preclusion; although the Pulaski County Circuit Court determined the amount of unpaid rent the buyer owed the seller, it specifically found that the rent amounts were instructive and not binding on the Crawford County court. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Crawford County Circuit Court erred by dismissing a seller's unlawful-detainer complaint based on the concept of judicial economy; judicial economy, by itself, is insufficient to support dismissal. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Right to Bring Action.

Administratrix of the decedent's estate, who was the decedent's widow, was entitled to pursue an unlawful detainer action against the decedent's parent, after the parent conveyed a property to the decedent, the parent moved into a house that the decedent built on the property, and the administratrix executed an administratrix deed following the decedent's death that gave the administratrix title to the property, because the administratrix made a written demand for surrender to the parent and the parent failed to surrender. Stamps v. Brown-Epps, 2015 Ark. App. 631, 474 S.W.3d 906 (2015).

Legislature contemplated actions for unlawful detainer under this section to include situations where a landlord-tenant relationship is not present; to rule that all unlawful-detainer actions must contain an element of landlord-tenant relationship would render the language of subdivision (2) meaningless. Stamps v. Brown-Epps, 2015 Ark. App. 631, 474 S.W.3d 906 (2015).

18-60-306. Jurisdiction — Definition.

CASE NOTES

Dismissal.

Crawford County Circuit Court erred by dismissing a commercial lessor's unlawful-detainer complaint based on the doctrine of claim preclusion because the lessor did not have a full and fair opportunity to litigate the unlawful-detainer claim in an action between the parties in Pulaski County; this section specifically prohibited the seller from asserting his unlawful-detainer claim in Pulaski County, and the Pulaski County Circuit Court correctly determined that it did not have jurisdiction to adjudicate the claim. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Because the parties did not have a full and fair opportunity to litigate all components of an unlawful-detainer action in Pulaski County, the Crawford County Circuit Court was not barred from doing so on the basis of issue preclusion; although the Pulaski County Circuit Court determined the amount of unpaid rent the commercial lessee owed the lessor, it specifically found that the rent amounts were instructive and not binding on the Crawford County court. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Crawford County Circuit Court erred by dismissing a commercial lessor's unlawful-detainer complaint based on the concept of judicial economy; judicial economy, by itself, is insufficient to support dismissal. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

18-60-309. Judgment for plaintiff — Assessment of damages — Writs of possession and restitution.

CASE NOTES

Dismissal.

Crawford County Circuit Court erred by dismissing a seller's unlawful-detainer complaint based on the doctrine of claim preclusion because the seller did not have a full and fair opportunity to litigate the unlawful-detainer claim in another county; section 18-60-306 specifically prohibited the seller from asserting his unlawful-detainer claim in Pulaski County, and the Pulaski County Circuit Court correctly determined that it did not have jurisdiction to adjudicate the claim. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Because the parties did not have a full and fair opportunity to litigate all components of an unlawful-detainer action in Pulaski County, the Crawford County Circuit Court was not barred from doing so on the basis of issue preclusion; although the Pulaski County Circuit Court determined the amount of unpaid rent the buyer owed the seller, it specifically found that the rent amounts were instructive and not binding on the Crawford County court. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Crawford County Circuit Court erred by dismissing a seller's unlawful-detainer complaint based on the concept of judicial economy; judicial economy, by itself, is insufficient to support dismissal. D&T Pure Trust v. DWB, LLC, 2019 Ark. App. 122, 572 S.W.3d 451 (2019).

Subchapter 4 — Partition and Sale of Land

18-60-401. Petition — Determination of heirs property — Applicability.

CASE NOTES

Sale.

Circuit court did not err in refusing to partition the property where the attorney had a lien on the property, not an ownership interest, in the property. Howard v. Adams, 2016 Ark. App. 222, 490 S.W.3d 678 (2016).

18-60-403. Parties generally.

CASE NOTES

Sale.

Circuit court did not err in refusing to partition the property where the attorney had a lien on the property, not an ownership interest, in the property. Howard v. Adams, 2016 Ark. App. 222, 490 S.W.3d 678 (2016).

Subchapter 5 — Quieting Title Generally

SECTION.

18-60-501. Proceedings generally.

CASE NOTES

Analysis

Applicability.
Attorney's Fees.

Applicability.

There was no basis in bankruptcy law or equity for granting a Chapter 13 debtor's request for a judgment declaring that the debtor was the legal owner of a home she had used as her residence for over 11 years and requiring two individuals who signed a land sale contract with the debtor in 2005 to deliver a deed to the debtor. The evidence established that the debtor did not fulfill the terms of the land sale contract, which allowed her to acquire title to her residence if she obtained adequate financing within a year of the date the contract was signed, and she had an adequate remedy under the Arkansas quiet title statute, §§ 18-60-501 to 18-60-511, to resolve her claim that she owned the property. In re Cole, No. 6:14-bk-71968, 2017 Bankr. LEXIS 2445 (Bankr. W.D. Ark. Aug. 29, 2017).

Attorney's Fees.

Circuit court erred in awarding a son attorney's fees because the litigation did not concern a breach of a contract but alleged a quiet title action; the quiet-title statutes do not authorize attorney's fees, and in the absence of statutory authority, attorney's fees are not available. Stokes v. Stokes, 2016 Ark. 182, 491 S.W.3d 113 (2016).

18-60-502. Petition.

(a) A claimant shall file in the office of the clerk of the circuit court of the county in which the land is situated a petition describing the land

and stating facts which show a prima facie right and title to the land in himself or herself and that there is no adverse occupant thereof.

(b)(1) The petitioner shall initiate a search of the following records in order to identify persons entitled to notice and shall provide notice as required under subdivision (b)(2) of this section:

(A) Land title records in the office of the county recorder;

(B) Tax records in the office of the county collector;

(C) Tax records in the office of the county treasurer;

(D) Tax records in the office of the county assessor;

(E) For an individual, records of the probate court for the county in which the property is located;

(F) For a partnership, partnership records filed with the county clerk; and

(G) For a business entity other than a partnership, business entity records filed with the Secretary of State.

(2)(A) The petitioner shall send notice by certified mail to the last known address in duplicate, with one (1) copy addressed by name to the person entitled to notice and the other copy addressed to "occupant", and if the certified mail is returned undelivered, the petitioner shall send a second notice by regular mail.

(B) The petitioner shall post a notice of the pending quiet title action conspicuously on the property.

(3) If the petitioner has knowledge of any other person who has, or claims to have, interest in the lands, the petitioner shall so state, and the person or persons shall be summoned as defendants in the case.

(c) The petitioner may embrace in his or her petition as many tracts of land as he or she sees proper so long as they all lie in the county.

History. Acts 1899, No. 79, §§ 2, 10, p. 133; C. & M. Dig., §§ 8363, 8364; Pope's Dig., §§ 10959, 10960; A.S.A. 1947, §§ 34-1902, 34-1903; Acts 2007, No. 1037, § 1; 2017, No. 377, § 1.

Amendments. The 2017 amendment substituted "as required under" for "pursuant to" in the introductory language of (b)(1); and deleted (b)(1)(F) and redesignated the remaining subdivisions accordingly.

18-60-506. Prima facie title.

CASE NOTES

Color of Title.

Circuit court erred in finding that a former sister-in-law established color of title under this section where the lease-purchase agreement contained only the owner's promise to sell the property upon the sister-in-law paying the monthly payments for 18 years, the agreement did not purport to transfer title, and a lease-purchase agreement was not an instrument or paper by which title usually passed. Dodson v. Lovelace, 2016 Ark. App. 265, 493 S.W.3d 353 (2016).

Subchapter 8 — Recovery of Personal Property and Replevin

18-60-808. Alternative procedure.

CASE NOTES

Constitutionality.

In a replevin dispute relating to mobile homes, since a debtor was unable to show that she was injured by the five-day time constraint to object to the issuance of an order of delivery, her arguments concerning the requirement as an unconstitutional alternative proceeding failed for lack of standing. Edgerly v. Vanderbilt Mortg. & Fin., Inc., 2016 Ark. App. 241, 492 S.W.3d 100 (2016).

Subchapter 10 — Uniform Partition of Heirs Property Act

SECTION.

18-60-1006. Determination of value.

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser registered in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f)(1) Except as provided in subsection (h), if an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty (30) days after a copy of the notice of the appraisal is sent to each party under subsection (e).

(2) In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

(h) The court may waive the hearing required under subsection (f) if no defendant or cotenant enters a court appearance or files an objection to the appraisal.

History. Acts 2015, No. 107, § 1; 2017, No. 1106, §§ 1, 2.

Amendments. The 2017 amendment redesignated former (f) as (f)(1) and (f)(2); in (f)(1), substituted "Except as provided in subsection (h) of this section, if" for "If" and deleted "whether or not an objection to the appraisal is filed under subdivision (e)(3)" following "subsection (e) of this section" at the end; and added (h).

CHAPTER 61

STATUTES OF LIMITATIONS

18-61-101. Actions to recover land, tenements, or hereditaments.

CASE NOTES

Analysis

Running of Statute Generally.
—Bar of Claims.

Running of Statute Generally.

Circuit court correctly concluded that the claims to the island were barred under this section where the city had asserted ownership rights since at least 1999, the city had claimed exclusive ownership since December 2003 at the latest, and the claimants had not asserted their rights until more than seven years after the seven-year statute of limitations had expired. Blackwood's Island v. Stodola, 2018 Ark. App. 357, 552 S.W.3d 62 (2018).

—Bar of Claims.

Trial court did not err in denying the neighbors' claim of a prescriptive easement across an owner's real property because testimony that other persons had occasionally used the road at issue to access the property behind the owner's property for various reasons was not sufficient to show such use was adverse to the owner's interests, and the neighbors' use of the owner's driveway did not commence until 2005 and was discontinued in 2010 when the owner put up the pipe fence and a locked gate, which time fell short of the seven-year period required to obtain an easement by prescription. Kelley v. Williams, 2015 Ark. App. 609, 474 S.W.3d 884 (2015).

18-61-104. Forcible entry and detainer — Unlawful detainer.

CASE NOTES

Cited: Stamps v. Brown-Epps, 2015 Ark. App. 631, 474 S.W.3d 906 (2015).

18-61-106. Recovery of lands held under tax title.

CASE NOTES

Possession.

Lessor owned disputed mineral interests because a 1958 tax sale of a one-half mineral interest and the accompanying tax deed were void; regardless of when the statute of limitations ran, whatever infringement occurred when the land was drilled was not sufficient to constitute notice of exclusive possession of minerals or an intent to oust the lessor due to co-ownership. SEECO, Inc. v. Holden, 2015 Ark. App. 555, 473 S.W.3d 36 (2015).